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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

11 BNSF RAILWAY COMPANY, on behalf)
12 of THE UNITED STATES OF AMERICA,) No. CV 19-40-M-DLC
13 Relator,) **VOLUME 8 EXCERPT REDACTED**
14 vs.) **TRANSCRIPT OF JURY TRIAL**
15 THE CENTER FOR ASBESTOS RELATED)
16 DISEASE, INC.,) TESTIMONY OF CHARLES
17 Defendant.) BRADFORD BLACK, M.D.
18 _____)
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**BEFORE THE HONORABLE DANA L. CHRISTENSEN
UNITED STATES DISTRICT COURT JUDGE
FOR THE DISTRICT OF MONTANA**

Russell Smith United States Courthouse
201 East Broadway
Missoula, Montana 59802
Thursday, June 22, 2023
09:20:02 to 14:23:40

Proceedings recorded by machine shorthand
Transcript produced by computer-assisted transcription

APPEARANCES

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WITNESS

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REPORTER'S NOTE: "Uh-huh" and "Um-hmm" indicate affirmative responses. "Huh-uh" and "Hm-umm" indicate negative responses.

1 REQUESTED EXCERPT

2 (Open court.)

3 (Jury present.)

4 THE COURT: Mr. Duerk, you may call your next
5 witness.

6 MR. DUERK: Relator calls Dr. Black to the stand.
7 (Oath administered to the witness.)

8 THE COURT: Mr. Duerk, you may proceed.

9 MR. DUERK: Thank you, Your Honor.

10 WHEREUPON,

11 CHARLES BRADFORD BLACK, M.D.,
12 called for examination by counsel for relator, after having
13 been first duly sworn to testify the truth, the whole truth,
14 and nothing but the truth, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. DUERK:

17 Q Would you please state your full legal name, spelling
18 your last name for the record?

19 A Charles Bradford Black, B-l-a-c-k.

20 Q You work at the CARD Clinic in Libby, Montana today.
21 Correct?

22 A Yes.

23 Q You worked at the CARD Clinic for years as the medical
24 director. Correct?

25 A Correct.

1 Q You have retired from your position as the medical
2 director. Correct?

3 A Yes.

4 Q Dr. Black, is it acceptable to submit a patient for
5 Medicare benefits when you have never seen the patient, did
6 not have any kind of exposure history for that patient, have
7 not reviewed or even seen any X-ray or CT scans, and have not
8 conducted a differential diagnosis?

9 A Would I, would I make a diagnosis? Is that what you're
10 asking?

11 Q Would it be acceptable to --

12 A Acceptable.

13 Q -- to submit a patient for Medicare benefits in that set
14 of circumstances?

15 A There would be -- for the most part, yes. There's
16 obviously exceptions within our population, so.

17 Q So it would be acceptable, in your mind, to submit a
18 patient for Medicare benefits when you've never seen them,
19 never seen any of their X-rays, never seen any of their
20 CT scans, haven't reviewed any exposure history, and haven't
21 conducted a differential diagnosis?

22 A No, that would not acceptable.

23 Q So just to be clear, it's unacceptable to submit a
24 patient for Medicare benefits in that set of circumstances
25 when you've never seen them face to face, never seen their

1 scans, never conducted an exposure history or a differential
2 diagnosis. Correct?

3 A That's in general. For making a clinical diagnosis,
4 that's absolutely true.

5 Q Okay. Dr. Morrisette has admitted to doing exactly that
6 at the CARD Clinic. Correct?

7 (Pause.)

8 THE WITNESS: I'm thinking on that. Maybe there
9 might have been one instance I can think of where she might
10 have done it without that information.

11 BY MR. DUERK:

12 Q What if she did it in a thousand cases? It's just as
13 wrong to do it in one case as a thousand. Correct?

14 A No. There are exceptions occasionally.

15 Q I understand that you believe there to be exceptions
16 occasionally, but in this case, you're aware of an instance
17 where Dr. Morrisette never saw the patient, never saw any of
18 the CT scans, never saw any chest X-rays, never interpreted
19 any of those scans, didn't conduct a differential diagnosis,
20 and still submitted that patient for Medicare. Correct?

21 A I believe, if I'm thinking right on the case you're
22 talking about, there was a patient that was dealt with long
23 distance. Shouldn't call them a patient; an individual that
24 had been exposed, had been long distance, could not get back
25 to Libby, and had a positive B-read --

1 Q Doctor, my question was: Are you aware that
2 Dr. Morrisette has submitted a patient for Medicare benefits
3 in the set of circumstances that I just named? Yes or no.

4 A I don't think I heard you say was there a B-read done
5 elsewhere. Did you say that at all or no?

6 Q I did not say that there was a B-read conducted anywhere.
7 In this set of circumstances, I'll ask you to assume that
8 there was not any kind of outside diagnosis from anywhere
9 else.

10 A Or B-read?

11 Q Sir, I'm gonna go about it this way.
12 Can I have a copy of his deposition?

13 MS. HANENBURG: (Handing.)

14 MR. DUERK: Your Honor, may I approach?

15 THE COURT: You may.

16 MR. DUERK: (Handing.) Please let the record
17 reflect that I'm handing the doctor a copy of his deposition
18 taken January 19, 2022 at 9 a.m.

19 BY MR. DUERK:

20 Q Doctor, you recall your deposition being taken January 19
21 of 2022. Correct?

22 A Yes.

23 Q I was there. You were there.

24 A Yes.

25 Q The court reporter was there.

1 A Sure.

2 Q And you have a transcript in front of you from that
3 deposition. Correct?

4 A Yes.

5 Q I'd like you to refer to page 89.

6 A Okay.

7 Q Okay. And in terms of Dr. Morrisette's testimony, you
8 were aware that Dr. Morrisette, the current clinical director
9 at CARD, had been deposed right before your deposition in
10 January. Correct?

11 A Yes.

12 Q Okay. In terms of the patient that Dr. Morrisette
13 reviewed, I'd like you to assume these facts:

14 That she had a letter from the patient from some years
15 back that may have referred to an outside -- we'll assume it's
16 a B-read;

17 That she had not seen that patient in person;

18 That she had not reviewed any scans;

19 That she had not conducted a differential diagnosis, nor
20 did she have any type of exposure history.

21 Do you understand those circumstances?

22 A Yeah, yeah. And my awareness on that is that she had
23 good evidence this patient had a B-read. And a B-read, once
24 again, whether we diagnose them clinically, a B-read is a
25 statutory diagnosis under the public health law.

1 Q I understand --

2 THE COURT: Dr. Black, that was nonresponsive.

3 Do you want me to repeat the question?

4 MR. DUERK: Yes, please.

5 THE COURT: "Okay. In terms of the patient that
6 Dr. Morrisette reviewed, I'd like you to assume these facts:

7 "That she had a letter from the patient from some
8 years back that may have referred to an outside -- we'll
9 assume it's a B-read;

10 "That she had not seen that patient in person;

11 "That she had not reviewed any scans;

12 "That she had not conducted a differential
13 diagnosis, nor did she have any type of exposure history.

14 "Do you understand those circumstances?"

15 THE WITNESS: Under those circumstances, I would
16 say --

17 MR. DUERK: Objection. Nonresponsive.

18 THE COURT: The question was: "Do you understand
19 those circumstances," as Mr. Duerk described them?

20 THE WITNESS: Yes. Yes, I do.

21 THE COURT: Okay.

22 BY MR. DUERK:

23 Q And do you understand that in this particular patient's
24 case, there was not a B-read form or checklist available in
25 this patient's case? Do you understand that?

1 A No, I don't understand all of it.

2 Q I would like you to assume that in this patient's case,
3 an individual CARD patient named Gerald N., who had never been
4 to the clinic, that the only information Dr. Morrisette had
5 was not a B-reader checklist form but a letter from over a
6 decade ago referencing some type of outside scan. Do you
7 understand the facts in Gerald N.'s case as I've recited them
8 to you now?

9 A Yes.

10 Q In that set of circumstances, where the patient does not
11 even have evidence of a B-read, does not even have evidence of
12 a B-read check form, checklist form, does not have a B-read
13 interpretive report from the B-reader that sets forth the date
14 of the scan or the type of scan used, in those circumstances,
15 without a B-read interpretive form, in your mind, would it be
16 appropriate to diagnose that patient with an asbestos-related
17 disease and submit them for lifetime Medicare benefits?

18 A I would have to have seen the communication before I
19 would -- could answer that.

20 Q In terms of the communication, do you mean the letter
21 from over a decade ago referencing that there may have been
22 some sort of scan done?

23 A If it was a quality report from a physician and I had
24 confidence that that, that provider gave solid information
25 about the patient having a B-read, I would feel comfortable.

1 But it's the circumstances of the letter that makes a lot of
2 difference.

3 Q Sure. And if that letter didn't mention even the name of
4 the provider, it didn't mention the type of scan, it didn't
5 mention the asbestos-related disease, it didn't even mention
6 the type of abnormality, would that still somehow qualify, in
7 your mind, as a sufficient basis for submitting a patient for
8 Medicare benefits for life?

9 A I would say in general, no, but I haven't seen the
10 letter. The letter would be everything. It would create a
11 confidence that you're looking at a valid piece of
12 information.

13 Q So in your mind, for this entire B-read-only category of
14 patients, of which there are more than a hundred, you are now
15 saying to this jury that you don't even need a B-reader
16 checklist form? You just need a letter from anybody without
17 any details of that B-read interpretation? No date? No scan
18 referenced? Not even an abnormality referenced? On the basis
19 of a letter alone, it would be perfectly acceptable, in your
20 mind, to submit over a hundred patients for lifetime Medicare
21 benefits?

22 A I would tend not to, of course. I would not, I would not
23 accept it.

24 Q Sir, you would tend not to or you would not accept it?

25 A Well, I qualified it because of the exceptions of the

1 information that was provided and by whom.

2 Q So what if you didn't have any idea who provided that
3 letter in terms of the identity of the B-reader?

4 A Well, then I would be hesitant to accept that.

5 Q Hesitant.

6 A Well, I would, I would not accept that. Right.

7 Q You would not accept it --

8 A Right, right.

9 Q -- if you didn't know who the B-reader was. Correct?

10 A If I didn't know the person that was transferring the
11 information.

12 Q So if you knew the person who was transferring the
13 information about some kind of reader but you didn't know who
14 the B-reader was, you didn't know the date of the scan, you
15 didn't know the abnormality that the B-reader or any reader
16 found, it would be acceptable so long as you knew the identity
17 of the person who sent the letter from over a decade ago?

18 A Well, if it was a board-certified pulmonologist or
19 somebody knowledgeable in asbestos and they clearly stated it
20 and you had that kind of confirmation --

21 Q Sure. In this case, I'd like you to assume that you
22 don't even know the identity of the person who sent the
23 letter. Understood?

24 A I don't, no.

25 Q Right. So in that set of circumstances, would it be

1 acceptable, in your mind, to submit over a hundred patients
2 for lifetime Medicare benefits on the basis of a letter whose
3 author you don't know?

4 A No.

5 Q Okay. In Dr. Morrisette's example, when she was
6 deposed, I'll represent to you that she didn't know the
7 identity of the author who sent the letter. Okay?

8 A (No response.)

9 Q Does that make sense?

10 A Yes.

11 Q So in this instance, regarding patient Gerald N., this
12 would be an inappropriate way to submit a claim for lifetime
13 Medicare benefits. Correct?

14 A I'll say yes because that's most commonly what I would
15 do, based on what you've presented.

16 Q Right. So in Gerald N.'s case, if Dr. Morrisette and
17 CARD asserted to the Social Security Administration that that
18 patient had a diagnosis of an asbestos-related disease, that
19 Medicare claim form, that EHH form, would contain false
20 information. Correct?

21 A If, in fact, I was not comfortable, once again, with
22 that, that would be correct.

23 Q That would be a false claim. Correct?

24 A It could be, yes.

25 Q No, not "could be." That would be a false claim. Right?

1 A In gen- -- I would say yes.

2 Q Not "in general." Not without qualification. In that
3 set of circumstances, if a patient was submitted for lifetime
4 Medicare benefits based on the information described related
5 to Gerald N., that would be a false claim. Correct?

6 A I am still, once again, stuck on the issue. It's hard to
7 answer that question.

8 Q It's difficult for you to answer that question.

9 A It's difficult because of the circumstances.

10 Q Sir, we've covered the circumstances in Gerald N.'s case
11 exhaustively. I would like to just get a clear answer
12 finally, at long last, in this case so the jury can move on.

13 Dr. Black, in this set of circumstances, if CARD signs
14 and dates an EHH form with a date of diagnosis for a patient
15 in support of lifetime Medicare benefits and there is no
16 diagnosis, not even from a B-reader, that would constitute a
17 false claim. Correct?

18 A No.

19 Q It would not. So this practice is perfectly acceptable
20 to you and can be replicated thousands of times at CARD, and
21 you would recommend doing it again. Correct?

22 A No.

23 Q Here's the tension. It's inappropriate to submit
24 patients for Medicare benefits on a claim like Gerald N.'s
25 case. Right?

1 A No.

2 Q It's not inappropriate.

3 A (No response.)

4 MR. DUERK: If we could put Exhibit 46, page 1, on
5 the screen?

6 MS. HANENBURG: (Complied with request.)

7 BY MR. DUERK:

8 Q Let the record reflect that I'm showing you an EHH form
9 for Judy P. Do you see it in front of you?

10 A Yes.

11 Q Do you see that Judy P. has a diagnosis of the
12 asbestos-related impairment asbestosis on this form?

13 A Yes.

14 MR. DUERK: If we could go down to the date of
15 diagnosis?

16 MS. HANENBURG: (Complied with request.)

17 BY MR. DUERK:

18 Q Do we see that there's a date of diagnosis of August 20,
19 2013 on this form?

20 A Yes.

21 Q Do we see what appears to be a rubber-stamp signature on
22 this form representing your signature?

23 A Yes.

24 Q And do we see that apparently this form was submitted to
25 the Social Security Administration on or about August 21,

1 2013?

2 A Yes.

3 Q Sir, we've talked about Judy P.'s EHH form in the past.
4 Correct?

5 A Yes.

6 Q At deposition on January 19, 2022, we talked about
7 Judy P.'s deposition -- or Judy P.'s EHH form at length.
8 Fair?

9 A Yes.

10 Q And at that time, sir, you stated under oath that there
11 was false information, untrue information, on Judy P.'s EHH
12 form. Correct?

13 A Yes.

14 Q So you have admitted, sir, that the CARD Clinic has
15 submitted EHH forms to the Social Security Administration in
16 support of Medicare benefits for life with false information
17 on those forms. Correct?

18 A No. There's an explanation for this.

19 Q Sir, we'll go about it this way. Let's talk about
20 Judy P.'s EHH form directly.

21 You recall testifying that there were false statements,
22 untrue statements, on J.P.'s EHH during your sworn testimony
23 on January 19 of last year. Correct?

24 A Yes.

25 Q So you testified, under oath, there were false statements

1 on J.P.'s EHH form when it was submitted to the Social
2 Security Administration. Correct?

3 A Not at the -- not at that time, no. This is one that we
4 had discovered. It happened as a result of an employee that
5 was filling these out and had not -- had problems with it, so
6 we had to correct all of that, and we did, so.

7 Q Sir, I'd like you to turn to page 68 of your deposition
8 from January 19. I'd like you to reference line 6.

9 A Which page? I'm sorry.

10 Q Page 68, line 6. And I'm referencing the date of
11 diagnosis in my questions here.

12 Do you see the date of diagnosis on Judy P.'s EHH form
13 submitted to Medicare?

14 A Yes.

15 Q That information is false. Correct?

16 A Right. It was another error made by --

17 Q No. Sir -- objection. Nonresponsive.

18 Sir, that information is incorrect?

19 A It's incorrect. That's right.

20 Q All right. In fact, the EHH form in Judy P.'s case
21 mentions in multiple places that she has to have an
22 asbestos-related condition and its date of diagnosis listed on
23 that EHH that went to Social Security. Correct?

24 A Yes.

25 Q The form itself says, "Check the box next to the

1 diagnosed impairment and print the date of diagnosis."

2 Correct?

3 A Yes.

4 Q There's a diagnosis code here listed for asbestosis.

5 Correct?

6 A Yes.

7 Q And the diagnosed impairment in her case was asbestosis.

8 Correct?

9 A That was entered, yes.

10 Q Judy P. did not have asbestosis. Correct?

11 A No.

12 Q Judy P. did not have the asbestos-related disease of
13 asbestosis. Is that right?

14 A Not asbestosis.

15 Q Okay. So any information on that form that suggests that
16 Judy P. was diagnosed with asbestosis on August 20, 2013 is
17 not true. Correct?

18 A That entry is not correct.

19 Q Sir, if you would turn to page 69, I'd like to read your
20 deposition testimony from that day. Please tell me if I've
21 read it correctly.

22 Are you at page 69, line 5?

23 A Yes.

24 Q I'll read the question and the answer. Please tell me if
25 I've read it correctly. Okay?

1 Question: "All right. So any information on that form
2 that suggests that Judy [P.] was diagnosed with asbestosis on
3 August 20th, 2013 is not true; correct?"

4 Answer: "The way it reads, yes."

5 Did I read that correctly?

6 A I'm trying to find that yet. I'm sorry. Where was it,
7 exactly?

8 Q Page 69, line 4, to --

9 A Okay.

10 Q -- page 69, line 8.

11 A Okay.

12 Q Sir, my only question was: Did I read that section
13 correctly?

14 A Yes.

15 Q Okay.

16 Sir, there are multiple places on J.P.'s EHH form that
17 have untrue information. Correct?

18 A There's two.

19 Q Okay. I'll go through some of them.

20 First of all, Judy P. does not have asbestosis. Correct?

21 A That's correct.

22 Q And so that part of her EHH form is false. Correct?

23 A Yes.

24 Q Judy P. was not diagnosed by the provider, that being
25 you, for asbestos-related disease. Correct?

1 A That's correct.

2 Q So that part of Judy P.'s form also is false. Correct?

3 A Which part? I'm sorry. Which part?

4 Q Judy P. was not diagnosed by the healthcare provider.

5 A Right.

6 Q You did not diagnose Judy P. with asbestos-related
7 disease. Correct?

8 A That's correct.

9 Q So that part of Judy P.'s form is false. Correct?

10 A Which part?

11 Q Sir, we'll blow it up for you.

12 If you look at the date of diagnosis at the bottom --

13 A Yes, yes.

14 Q -- of this page -- now I'd like to just make a clear
15 record.

16 So Judy P. was not diagnosed by the provider at CARD,
17 that being you, with asbestosis on August 20, 2013. Correct?

18 A That's correct.

19 Q So this part of Judy P.'s EHH form is also false.
20 Correct?

21 A Yes. Oh, the date is wrong. Yes.

22 Q In terms of Judy P. and her CT scan read by you or anyone
23 else indicating asbestosis, no one read Judy P.'s scan as
24 interpreting asbestosis in her case. Correct?

25 A That's correct.

1 Q So suggesting otherwise, suggesting she had a CT scan
2 supporting a diagnosis of asbestos-related disease from you,
3 the provider, is false. Correct?

4 A Well, you mean by what's entered right now on the form,
5 the part that -- of asbestosis? Or what -- I don't quite get
6 this. I haven't entered anything to indicate --

7 Q Sir, this form was --

8 A -- my opinion.

9 Q -- checked with asbestosis as the diagnosed impairment.
10 Correct?

11 A Yes. That's what's on the form. Yes.

12 Q Yes. And you didn't diagnose Judy P. with asbestosis.
13 Correct?

14 A No.

15 Q The CTs did not indicate to you that Judy P. had
16 asbestosis. Correct?

17 A No.

18 Q So representing to anyone at the Social Security
19 Administration that the CTs in her case served as the basis
20 for your diagnosis of asbestosis, that would be incorrect?

21 A What happened is we discovered that was not --

22 Q Sir, I don't need --

23 A So --

24 Q Sir, I don't need any background explanations. There
25 were no background explanations offered during your deposition

1 of January 19, 2022 about Judy P.'s EHH form. Correct?

2 A At that time, no. After my review of it, I realized what
3 happened.

4 Q And in terms of after your review, you realized, you say,
5 what happened after your deposition where I had sworn
6 testimony from you. Correct?

7 A Yes.

8 Q And you had an opportunity to revise your deposition and
9 make any corrections on the errata sheet and send it back to
10 the court reporter after your deposition was taken. Were you
11 aware of that?

12 A Well, I'm aware you can do that. Yeah.

13 Q Yes. And you did not do that in terms of your deposition
14 related to these questions --

15 A I had --

16 Q -- about Judy P. Correct?

17 A Correct. I had not had a --

18 Q Sir, you've answered my question.

19 A All right.

20 Q In terms of discovery in this case, are you aware that
21 since two years ago, I've been asking CARD repeatedly for any
22 explanations about any of the defenses it intends to offer at
23 trial in this matter? Are you aware that that discovery
24 request was propounded on you and CARD?

25 A I guess so.

1 Q And I've never received a response from you or CARD about
2 Judy P.'s EHH form that, "Oh, there's more background story."
3 Fair?

4 A I don't know.

5 Q Dr. Black, in terms of this EHH form, you've already
6 testified that there's false information on it. I'd like to
7 continue with some of the other categories that I believe to
8 be false. Understood?

9 A Yes.

10 Q You did not interpret any of Judy P.'s records, any of
11 her CT scans, any of her B-reads at any time that caused you
12 to diagnose Judy P. with an asbestos-related disease.
13 Correct?

14 A I had other information, so I would say, no, that's not
15 correct. I had --

16 THE COURT: Nonresponsive.

17 MR. DUERK: Could we read the question back, please?

18 THE WITNESS: All right.

19 THE COURT: "You did not interpret any of Judy P.'s
20 records, any of her CT scans, any of her B-reads at any time
21 that caused you to diagnose Judy P. with an asbestos-related
22 disease. Correct?"

23 THE WITNESS: Yes, a clinical diagnosis.

24 THE COURT: The question was: "You did not
25 interpret any of Judy P.'s records, any of her CT scans, any

1 of her B-reads at any time that caused you to diagnose Judy P.
2 with an asbestos-related disease. Correct?"

3 THE WITNESS: Yes.

4 BY MR. DUERK:

5 Q Doctor, you didn't have any CT-scan reads by anyone else
6 indicating that Judy P. had asbestosis. Correct?

7 A Did you say CT reads?

8 Q I said CT scans.

9 A CT scans. No.

10 Q Sir, I'm getting caught on the double negatives, so I'll
11 ask you this again.

12 Judy P. did not have any CT scan read by you or anyone
13 else indicating asbestosis. Correct?

14 A Correct.

15 Q Okay. And so any representation that Judy P. had any
16 CT scan read by you or anyone else indicating an
17 asbestos-related disease that's indicated on this form in any
18 way, that would be false, too. Right?

19 A Repeat that.

20 Q Sir, let me deal with it this way.

21 A Please.

22 Q A CT scan is vastly more defined and specific than a
23 B-read chest X-ray. Correct?

24 A For the most part, yes.

25 Q For the most part --

1 A Yes.

2 Q -- or is it at all in dispute in this case that a CT scan
3 is much more thorough than a chest X-ray?

4 A Yes, it is.

5 Q All right. And in terms of chest X-rays, it would be
6 disingenuous at best to look at somebody's CT scan and find
7 that it's absolutely negative for asbestos-related disease but
8 then somehow claim that the chest X-ray has a better read on
9 that person's thoracic cavity, particularly their lungs and
10 their pleural spaces. Correct?

11 A No.

12 Q It would not --

13 A No.

14 Q -- in the instance where you have a CT scan -- you agree
15 that CT scans are vastly more thorough than chest X-rays.

16 A Yes.

17 Q And if a CT scan doesn't show something, are you saying
18 that a chest X-ray would, at times, be a better interpretive
19 scan?

20 A At times, there's images that are easy -- easier to see
21 on a chest X-ray.

22 Q Who do you know in the medical community in Libby or
23 Kalispell, or anyone else, that would say a chest X-ray is
24 more thorough than a CT scan?

25 A No.

1 Q So you don't know of any medical expert that would say a
2 chest X-ray is better than a CT scan. Correct?

3 A Correct.

4 Q And it is an undisputed fact in this case that CARD does
5 not use B-read chest X-rays for any diagnostic purpose.
6 Correct?

7 A We don't do B-reading. I'm not qualified.

8 Q That was not my question.

9 A Okay.

10 Q It is an undisputed fact in this case that CARD does not
11 now nor has it ever, within the time frame of the Affordable
12 Care Act, ever used a B-read chest X-ray for any diagnostic
13 purpose.

14 A No, not for clinical diagnosis.

15 Q Right. So in this situation where we've got a chest
16 X-ray but a CT scan indicates the patient is entirely clear of
17 any signs of asbestos-related disease, trying to pin a
18 diagnosis on a chest X-ray that shows less than a CT, that
19 would be problematic at best. Fair?

20 A No.

21 Q It wouldn't be problematic for you?

22 A No, no.

23 Q That's the situation in Judy P.'s case and dozens and
24 dozens and dozens of other cases. Fair? There was a CT scan
25 available that showed nothing, but CARD claimed that a B-read

1 chest X-ray was a sufficient basis for submitting that claim
2 for Medicare benefits. Correct?

3 A Specifically on this? On Judy PXXXX?

4 Q Yes.

5 A Yes.

6 Q And that practice was employed by CARD over and over and
7 over for this B-read category of patients. Correct?

8 A Yes.

9 Q And so in that set of circumstances, CARD knowingly was
10 looking at the more thorough scan, the CT scan, seeing that
11 there was nothing there, and yet still knowingly submitting
12 those same patients for lifetime Medicare beneficiary status
13 on a scan that was clearly inferior, a chest X-ray, to the
14 CT scan that is clearly superior in terms of its resolution.
15 Correct?

16 A Yes.

17 Q Judy P.'s form here has a box checked -- or not checked,
18 sorry -- a box available to the CARD provider right above the
19 date of diagnosis. Do you see it?

20 A Yes.

21 Q And that box says, "Individual does not have an
22 impairment listed above." Did I read that correctly?

23 A Yes.

24 Q So in Judy P.'s case, and in over 100 other cases, the
25 CARD provider, you, had the option of checking this box,

1 acknowledging that Judy P. doesn't have asbestosis. Correct?

2 A Correct.

3 Q This box wasn't checked, clearly, in Judy P.'s case.

4 Correct?

5 A Correct.

6 Q And this individual, Judy P., does not have an impairment

7 of asbestosis in this case. Correct?

8 A Correct.

9 Q So it would have been true to merely check this box,
10 telling the Social Security Administration that the individual
11 does not have an impairment listed above. Correct?

12 A Yes.

13 Q CARD didn't do that here, and CARD didn't do it in any of
14 the other B-read-only patients for those hundred-plus other
15 EHH forms. Correct?

16 A No.

17 Q So in terms of the information on J.P.'s form and over a
18 hundred other B-read-only patient forms, there is untrue
19 information on each of those forms. Correct?

20 A No.

21 Q I'm sorry; again, double negative.

22 On J.P.'s form as well as over a hundred other
23 B-read-only patients, there is untrue, incorrect, false
24 information on those EHH forms submitted to Medicare. Right?

25 A No.

1 Q Are you disagreeing with me, or are you acknowledging
2 that there is false information on J.P.'s form?

3 A On J.P.'s, there is.

4 Q Okay. And in over a hundred other EHH forms similar to
5 J.P., would you acknowledge that there's false information on
6 those forms, also?

7 A No.

8 Q You would not.

9 A No.

10 Q In terms of the hundred other EHH forms, it's true that
11 those other B-read-only patients have a date of diagnosis
12 listed on the EHH form itself. Correct?

13 A Yes.

14 Q It's also true, on a hundred other forms, that you, the
15 CARD provider, checked a box for a diagnosed impairment of
16 asbestosis or a diagnosed impairment of pleural thickening and
17 pleural plaques. Correct?

18 A Would you please repeat that?

19 Q Sure.

20 In over a hundred forms, you, as the provider at CARD,
21 checked the diagnosed impairment of either asbestosis or
22 pleural thickening and pleural plaques. Correct?

23 A Yes.

24 Q And you checked those boxes when you knew those patients
25 did not have a diagnosis of asbestos-related disease.

1 Correct?

2 A Yes.

3 Q So that information, in over 100 EHH patient forms, was
4 not true when those forms were submitted to Medicare through
5 SSA. Correct?

6 A No, they were sub- -- no. The answer is no.

7 Q You didn't diagnose any of those patients. Correct?

8 A No.

9 Q Are you -- sir, I'm sorry, but in J.P.'s case, Judy P.'s
10 case, you didn't diagnose the patient with asbestos-related
11 disease. Correct?

12 A Correct.

13 Q And in all of those other B-read patients, over a hundred
14 of them, you did not diagnose those patients with
15 asbestos-related disease, either. Correct?

16 A Correct.

17 Q But you submitted forms with the diagnosed impairments of
18 either asbestosis or pleural thickening, pleural plaques, to
19 the Social Security Administration. Correct?

20 A Yes.

21 Q And those forms all had the date of diagnosis section of
22 the EHH form filled out, too. Correct?

23 A Yes.

24 Q And then either you signed the form or it sounds like
25 most of those forms were rubber-stamped with those signatures

1 and sent on to the SSA. Correct?

2 A Yes.

3 Q So at least in terms of the date of diagnosis box and the
4 impairments boxes above, the information on those 100-plus
5 other B-read-only patients was not true. Correct?

6 A No.

7 Q Sir, are you saying that there were untrue sections on
8 the other 100-plus EHH forms or not?

9 A Please rephrase that.

10 Q Sure.

11 Dr. Black, there are sections on Judy P.'s EHH form that
12 are false. Right?

13 A Yes.

14 Q There are sections on those other EHH patient forms that
15 were submitted on a B-read-only that are also false. Right?

16 A No.

17 Q The date of diagnosis for each of those patients -- those
18 patients didn't have a diagnosis, either. Correct?

19 A Did not have a clinical diagnosis. Correct.

20 Q And we can talk about splitting hairs later. But they
21 did not have a diagnosis from you or anyone at CARD for
22 asbestos-related disease. Correct?

23 A Yes.

24 Q All right. So when CARD submitted those EHH forms
25 indicating that a CARD provider had diagnosed that patient

1 with asbestos-related disease, that information was false.

2 Correct?

3 A No.

4 Q I don't want to hear about whether a B-reader had
5 interpreted this form. I am only focusing on the CARD
6 provider completing Section 2 of the EHH form. Do you
7 understand that?

8 A Yes.

9 Q When a CARD provider asserted that there was a CARD
10 provider's diagnosis of asbestos-related disease for these
11 patients, that would be untrue. Correct?

12 A If it was a B-reader, no.

13 Q Sir, it's an undisputed fact in this case that B-readers
14 do not diagnose. Correct?

15 A In -- under the -- no, it's not correct.

16 THE COURT: Let me reread to the jury Stipulated
17 Fact 67. I believe you'll see this on the instruction that I
18 allowed you to have.

19 Stipulated Fact 67, I believe, reads: "CARD does
20 not consider B-reader chest x-ray or reports for any
21 asbestos-related diagnostic purposes."

22 BY MR. DUERK:

23 Q Did you hear that instruction?

24 A Yes.

25 Q It is an undisputed fact that CARD does not consider

1 B-reader chest X-ray or reports for any asbestos-related
2 diagnostic purposes. Correct?

3 A Correct.

4 MR. DUERK: If we could turn to Exhibit 109? If we
5 could look at paragraph 15 -- I'm sorry. If we could look at
6 paragraph 52, please?

7 MS. HANENBURG: (Complied with request.)

8 THE COURT: Amanda, has this been admitted?

9 THE CLERK: Yes. It was preadmitted.

10 BY MR. DUERK:

11 Q I'll read these. Please tell me if I've read them
12 correctly.

13 "On or about August 20, 2013, CARD told patient J.P. that
14 she did not have a diagnosis of asbestos related disease."

15 "Undisputed."

16 That's an undisputed fact in this case. Correct?

17 A Yes.

18 MR. DUERK: If we could go to page 109, page 14,
19 paragraph 50?

20 MS. HANENBURG: (Complied with request.)

21 BY MR. DUERK:

22 Q I'll read it. Please tell me if I've read it correctly.

23 "CARD has stated in writing that an abnormality detected
24 by a B-reader is not considered a diagnosis of asbestos
25 related disease."

1 "Undisputed."

2 Did I read that correctly?

3 A Yes.

4 MR. DUERK: If we could turn to paragraph 49?

5 MS. HANENBURG: (Complied with request.)

6 BY MR. DUERK:

7 Q Dr. Black, "B-readers do not diagnose asbestos related
8 disease in CARD patients because a 'diagnosis of asbestos
9 related disease is based on exposure histories, time since
10 exposure, medical provider assessment and radiographic
11 images.' CARD admits that B-readers who identify
12 abnormalities do not have the rest of this information."

13 "Undisputed."

14 I read that correctly. Right?

15 A Yes, yes.

16 Q Paragraph 48: "A B-reader interpretive report is not a
17 diagnosis because the physician has not seen the patient,
18 taken an exposure history, or ruled out a differential
19 diagnosis."

20 "Undisputed."

21 Did I read that correctly?

22 A Yes.

23 MR. DUERK: If we could go to paragraph 47?

24 MS. HANENBURG: (Complied with request.)

25 ///

1 BY MR. DUERK:

2 Q "The B-reader forms for both chest x-rays and CT scans
3 used by CARD do not have a box indicating a 'diagnosis.'"

4 "Undisputed."

5 Did I read that correctly?

6 A Yes.

7 Q Paragraph 46: "B-readers mark boxes on a form related to
8 lung abnormalities, but B-readers do not diagnose."

9 "Undisputed."

10 Did I read that correctly?

11 A Yes.

12 Q Paragraph 45: "Dr. Black has stated in sworn testimony
13 that CT scans are vastly more useful for diagnosing
14 asbestos-related disease than chest x-rays."

15 "Undisputed."

16 Did I read that correctly?

17 A Yes.

18 Q Paragraph 44: "CARD does not consider B-reader chest
19 x-rays or reports for any asbestos-related diagnostic
20 purposes."

21 "Undisputed."

22 Did I read that correctly?

23 A Yes.

24 Q And, finally, paragraph 43. Put very plainly, sir,
25 "B-readers do not diagnose."

1 "Undisputed."

2 Did I read that correctly?

3 A Yes.

4 Q In terms of the B-reader testimony in this case, were you
5 present for the testimony from Dr. Meyer and Dr. Kanne, the
6 B-readers from the University of Wisconsin?

7 A Yes.

8 Q Both of those B-readers testified under oath in front of
9 this jury that they do not diagnose. Correct?

10 A Yes.

11 Q You know that the University of Wisconsin, where both of
12 those B-readers work, after learning of your practice, CARD's
13 practice, of submitting patients on a B-read-only to Social
14 Security for lifetime Medicare beneficiary status, both of
15 those B-readers quit. Correct?

16 A Yes.

17 Q Dr. Lynch, a physician at National Jewish Hospital, the
18 third thoracic radiologist on CARD's expert B-read panel, when
19 he learned about this practice, he followed suit with
20 Dr. Meyer and Dr. Kanne, and Dr. Lynch will no longer serve as
21 a B-reader for CARD. Correct?

22 A Yes.

23 Q Let's return to J.P. Let's continue with Exhibit 109,
24 page 15. I'll start with paragraph 52.

25 Sir, "On or about August 20, 2013, CARD told patient J.P.

1 that she did not have a diagnosis of asbestos related
2 disease."

3 "Undisputed."

4 Correct?

5 A I'm having trouble with my hearing aids. Just a second,
6 please.

7 Q We can take a moment.

8 A There. I think they're working now.

9 Q All right.

10 If we could return to paragraph 52, sir.

11 A Yes.

12 Q I'll read it. Please tell me if I've read it correctly.

13 "On or about August 20, 2013, CARD told patient J.P. that
14 she did not have a diagnosis of asbestos related disease."

15 "Undisputed."

16 Correct?

17 A Correct.

18 Q Paragraph 53: "Dr. Black determined that J.P. did not
19 have a diagnosis of asbestos-related disease."

20 "Undisputed."

21 Correct?

22 A Correct.

23 Q Paragraph 54: "CARD's chart note, and all of the
24 radiographic scans read by both the local radiologist and CARD
25 providers prior to August 20, 2013, indicate J.P. did not have

1 a diagnosis of asbestos related disease."

2 Correct?

3 A Correct.

4 Q Paragraph 55: "CARD records show J.P. does not have a
5 clinical diagnosis of asbestos-related disease."

6 "Undisputed."

7 Did I read that correctly?

8 A Yes.

9 Q Paragraph 56: "However, Dr. Black signed J.P.'s EHH form
10 to include a date of diagnosis of August 20, 2013 -- the same
11 date CARD records show Dr. Black determined J.P. did not have
12 a diagnosis of asbestos related disease."

13 "Undisputed."

14 Did I read that correctly?

15 A Yes.

16 Q Now in J.P.'s case, the diagnosed impairment that CARD
17 checked on her EHH form was asbestosis. Correct?

18 A Yes.

19 Q And that was untrue. Correct?

20 A Correct.

21 Q CARD's own records indicate that J.P. received pilot
22 program benefits based on CARD's EHH form showing she had a
23 diagnosis by a CARD provider for asbestos-related disease.

24 Correct?

25 A Correct.

1 Q J.P. received pilot program benefits in the form of
2 indoor assistance with housekeeping and outdoor assistance
3 with yard work paid for by the Medicare pilot program based on
4 CARD's diagnosis of asbestos-related disease. Correct?

5 A That's correct.

6 Q J.P. did not have an asbestos-related disease. Correct?

7 A Correct.

8 Q The Medicare pilot program benefits that were awarded to
9 J.P. were based on Dr. Black's -- your -- determination that
10 they were medically necessary due to the presence of
11 asbestos-related disease. Correct?

12 A Correct.

13 Q Now you and CARD based J.P.'s claim that she was eligible
14 for Medicare benefits on a B-reader detection of an
15 abnormality on J.P.'s radiographic scan. Correct?

16 A Correct.

17 Q But you have testified, both at deposition and today,
18 that the B-reader did not diagnose J.P. with anything because
19 B-reading radiologists do not see the patient, take an
20 exposure history, or rule out differential diagnoses.
21 Correct?

22 A Please repeat that. I'm sorry.

23 Q Let's do it this way.

24 If we could look at Exhibit 109, page 17, paragraph 62?

25 MS. HANENBURG: (Complied with request.)

1 BY MR. DUERK:

2 Q I'll read some undisputed facts in this case. Please
3 tell me if I've read them correctly.

4 "Dr. Black testified the B-reader did not diagnose J.P.
5 with anything, because B reading radiologists do not see the
6 patient, take an exposure history or rule out differential
7 diagnoses."

8 That fact is undisputed in this case. Correct?

9 A Yes. I see it there, so.

10 Q I --

11 A Yes.

12 Q It's undisputed. Correct? Not you "see it there."

13 That's an undispu- --

14 A I saw it. Yes, I said that. Yes.

15 Q And it's an undisputed fact in this case. Correct?

16 A Correct.

17 Q Paragraph 63: "J.P.'s radiographic interpretive reports
18 indicate that the patient showed signs of a fractured rib --
19 not asbestos-related disease."

20 That is an undisputed fact in this case. Correct?

21 A Yes.

22 Q Paragraph 64: "A broken rib is not a condition related
23 to any kind of asbestos-related disease."

24 "Undisputed."

25 That, sir, is an undisputed fact in this case. Correct?

1 A Correct.

2 Q Now in terms of J.P.'s case, there's even a letter in her
3 file that indicates that CARD was aware J.P. had no
4 asbestos-related disease diagnosis. Correct?

5 A Correct.

6 Q Okay. And that letter exists in a number of other
7 B-read-only patient files. True?

8 A Would you repeat the whole --

9 Q I'll go about it this way. You were here for the
10 testimony of both Liz Voorhies and Nurse Tami Reatz this
11 morning. Correct?

12 A Yes. Correct.

13 Q And Exhibit 40, page 2, was put up on the screen during
14 the testimony for, I believe it was, Ms. Voorhies' testimony.
15 Do you recall seeing Exhibit 40, page 2, what I'll reference
16 as the B-reader letter, this morning?

17 A Yes.

18 Q And this letter indicates that in Marilyn E.'s case, in
19 Judy P.'s case, in Patrick W.'s case, in Tonsie J.'s case, in
20 Jay J.'s case, in Sheila B.'s case -- and I could go down the
21 list of over 100 patients -- there are letters indicating that
22 CARD said, in some form or fashion to each of those patients,
23 that they were eligible for Medicare benefits even though they
24 did not have a diagnosis of asbestos-related disease.
25 Correct?

1 A Correct.

2 Q This letter in Marilyn E.'s case, in Judy P.'s case, and
3 other B-read-only patient cases reads as follows:

4 "You participated in . . . health screening on [a certain
5 date] and at that time you were not diagnosed with an asbestos
6 related disease (ARD). You received a letter at the
7 conclusion of your appointment that informed you that your
8 chest x-ray and CT would be sent out for a second read by
9 other doctors specially trained in reading radiographic images
10 for dust diseases (like asbestos)."

11 Did I read the first section of this letter correctly?

12 A Yes.

13 Q The next paragraph:

14 "One of these doctors did identify a small abnormality on
15 your chest x-ray. It is nothing that has significant health
16 implications nor is it considered a diagnosis of an asbestos
17 related disease."

18 Did I read that correctly?

19 A Yes.

20 Q "A diagnosis of asbestos related disease is based on
21 exposure histories, time since exposure, medical provider
22 assessment, and radiographic images. The reader who
23 identified the abnormality did not have the rest of this
24 information."

25 Did I read that correctly?

1 A Yes.

2 Q Letters at CARD went out to these patients, however, that
3 said something along the lines of the following:

4 "We are notifying you of this finding because any type of
5 abnormality identified by the outside reader, even if it is
6 not a diagnosis of asbestos related disease, qualifies you for
7 certain medical benefits." This section is bolded: "You are
8 now eligible for the Medicare Pilot Program for
9 [asbestos-related disease] that covers medically necessary
10 services not covered by usual medical insurance programs,
11 ([example] mileage, fitness club memberships, assistance with
12 daily living). Information about these programs is enclosed."

13 Did I read that correctly?

14 A Yes.

15 Q So, Dr. Black, during the testimony this morning, we
16 heard that occasionally CARD patients would call the clinic
17 and speak to Liz Voorhies, confused about this letter.
18 Correct?

19 A Yes.

20 Q Sometimes they would have questions for CARD about, "How
21 can I be eligible for Medicare benefits when I don't have an
22 asbestos-related disease?" and other related questions,
23 according to Ms. Voorhies' testimony this morning. Correct?

24 A Correct.

25 Q Ms. Voorhies testified that these questions came up more

1 than once at CARD in this B-read-only category of patients.

2 Correct?

3 A Correct.

4 Q Ms. Voorhies testified that this was a conversation that
5 she had with multiple CARD patients to try to explain that
6 confusion. Correct?

7 A Correct.

8 Q This whole notion that a patient doesn't have to have a
9 diagnosis of asbestos-related disease but can still get
10 Medicare benefits, pilot program benefits, and other benefits
11 for life, on its face, seems confusing. Correct?

12 A Yes.

13 Q Your clinic is called the Center for Asbestos Related
14 Disease. Correct?

15 A Correct.

16 Q It is not called the Center for Signing People Up for
17 Medicare Benefits Who Do Not Have Asbestos-Related Disease.
18 Correct?

19 A Yes. For clinical. Yeah.

20 Q So, sir, despite all of these ongoing questions at the
21 CARD Clinic among this entire set of over a hundred
22 B-read-only patients, did it occur to you or anyone else at
23 CARD that maybe you should carry this question forward to the
24 Social Security Administration?

25 A No.

1 Q Never. Not one time did anybody at CARD approach the
2 Social Security Administration in a ten-plus-year span of time
3 to clarify whether CARD's conduct was correct, legitimate, or
4 nonfraudulent until April of 2023. Correct?

5 A I'm gonna ask you to rephrase that.

6 Q I will.

7 Sir, when I deposed you, you testified that neither you
8 nor anyone at CARD, aside from Tanis Hernandez -- Tanis
9 Hernandez is a former CARD employee. Correct?

10 A Yes.

11 Q Tanis Hernandez was the lead person at CARD when it came
12 to issues of communicating with the SSA. Correct?

13 A Yeah. She was our administrator.

14 Q She was your administrator at CARD.

15 Aside from Tanis Hernandez's communication with SSA, you
16 didn't reference in your deposition any other communication
17 with SSA in writing, over the phone, or face to face in any
18 form or fashion that CARD had carried this question forward to
19 the SSA about whether it was proper to submit B-read-only
20 patients for lifetime Medicare benefits without a diagnosis of
21 asbestos-related disease. Correct?

22 A Correct.

23 Q And in terms of this question coming up, the question
24 about B-read-only patients being submitted for Medicare, it
25 kept coming up. Even the patients themselves would call CARD

1 year after year after year after year after year, according to
2 Liz Voorhies's testimony. Correct?

3 A Correct.

4 Q And not one time did you ever call the Social Security
5 Administration to determine whether this practice was okay.
6 Correct?

7 A Not that I know of.

8 THE COURT: Mr. Duerk, we'll take our morning
9 recess.

10 We'll be in recess for about 15 minutes.

11 (Recess taken from 10:27:43 to 10:51:09.)

12 (Open court.)

13 (Jury present.)

14 THE COURT: Please be seated.

15 Mr. Duerk, you may proceed with your examination.

16 MR. DUERK: Thank you, Your Honor.

17 BY MR. DUERK:

18 Q Before we left, we were talking about times that CARD
19 patients would call with questions about this B-read-only
20 program. Do you recall that part of your testimony?

21 A Yes.

22 Q I'd like to move on to a different topic now.

23 Sir, when you were deposed in January of 2022, we talked
24 about some representations that you made on the record about
25 who from the SSA taught CARD to fill out EHH forms in

1 B-read-only patient cases. Do you recall that topic coming up
2 in January of 2022?

3 A Yes, I do.

4 Q Sir, you were under oath during your deposition in
5 January of 2022, and it was your obligation to tell the truth,
6 the whole truth, and nothing but the truth, so help you.

7 Correct?

8 A Correct.

9 Q That is your obligation today. Correct?

10 A Yes.

11 Q At that deposition, you told me that the SSA taught CARD
12 to fill out EHH forms in B-read-only patient cases like
13 Judy P.'s. Correct?

14 A Correct.

15 Q You told me that someone at the SSA taught, directed,
16 explained, and instructed CARD to fill out EHH forms for
17 B-read-only patients. Correct?

18 A Correct.

19 Q I asked you who, who instructed CARD to fill out EHH
20 forms this way, and under oath you told me that it was a
21 representative from the Social Security Administration.
22 Correct?

23 A Correct.

24 Q And I asked the question, "Yes, but who at the Social
25 Security Administration taught you how to fill out these

1 forms?" And at first, you didn't tell me who the identity of
2 that SSA individual was. Correct?

3 A Correct.

4 Q And so I asked you again, twice, and finally you came up
5 with a name. You told me it was someone named Sonya.
6 Correct?

7 A Correct.

8 Q I asked you when Sonya told you that it was okay to fill
9 out EHH forms this way, and you said "early on." Correct?

10 A Yes, I believe so.

11 Q I asked what year Sonya at the SSA told you that, and you
12 guessed that it must have been in 2011. Correct?

13 A Correct.

14 Q I asked you where, where did this meeting with Sonya
15 happen. Correct?

16 A Correct.

17 Q And you said that Sonya, the SSA, came to Libby.
18 Correct?

19 A Yes.

20 Q You said that they came to the CARD Clinic in Libby.
21 Correct?

22 A Correct.

23 Q You said they sat down with your staff. Correct?

24 A Correct.

25 Q You said that Sonya from the SSA was the leader of that

1 group. Correct?

2 A (No response.)

3 Q Yes?

4 A The leader?

5 Q The leader of that group.

6 A Yeah. Yes.

7 Q Correct?

8 A (Nodded head affirmatively.)

9 Q Is that a yes?

10 A Yes.

11 Q Thank you.

12 You said, and I'll quote, "[T]hey went over in detail how
13 to fill these out because of the quandary -- I mean, the
14 awkwardness of trying to fit in a positive B-read and, you
15 know, when you didn't diagnose, yet, by the law, they have
16 access. And so they explained to do it this way, and that's
17 the way our staff has done it, by the book."

18 That's what you told me in January of 2022. Correct?

19 A I don't know how I said it exactly, but, anyway --

20 Q If you would turn --

21 A -- I did, I did say that, I'm sure, so.

22 Q If you would turn to page 72?

23 A Yes.

24 Q If you would look at lines 5 -- I'm sorry, lines 2 to 10.

25 I'll read it. Please tell me if I've read it correctly.

1 Your words: "They came to Libby. They came to the CARD
2 Clinic and they sat down with our staff, and I understand
3 Sonya was the leader of that group, and they went over in
4 detail how to fill these out because of the quandary -- I
5 mean, the awkwardness of trying to fit in a positive B-read
6 and, you know, when you didn't diagnose, yet, by the law, they
7 have access. And so they explained to do it this way, and
8 that's the way our staff has done it, by the book."

9 Did I read that correctly?

10 A Yes. Yes, you did.

11 Q Then I asked who else was at this Sonya meeting, and you
12 told me you didn't know because you weren't there. Correct?

13 A That's correct.

14 Q I asked if you had any record of that meeting, and you
15 said no.

16 A No.

17 Q You didn't have any record of that meeting between Sonya
18 and CARD staff. Correct?

19 A No, I didn't.

20 Q I asked you twice at your deposition if you had any
21 written authorization from the Social Security Administration
22 to enroll people in Medicare under the pilot program or
23 Medicare for life on the basis of an outside B-read-only. Do
24 you recall that?

25 A Yes.

1 Q And you said that's something that was in the details,
2 that I'd have to ask the right people, that you didn't know.
3 Correct?

4 A (No response.)

5 Q If you would look at page 73, lines 10 -- lines 6
6 through 11.

7 I asked: "Do you have any written authorization from the
8 Social Security Administration to enroll people in Medicare
9 under the Pilot Program or Medicare for life on the basis of
10 an outside B-read-only?"

11 Your answer: "That's something in the details you'll
12 have to ask the right people. I don't know."

13 Did I read that correctly?

14 A Yes.

15 Q Then I asked who the right people were, and you indicated
16 that Sonya was the right person to talk to. Correct?

17 A Yes.

18 Q "The right people." So this jury heard from the Social
19 Security Administration. You're aware of that, correct?

20 A Yes.

21 Q Heather Hillmann, the Medicare lead, and Monica Nolan,
22 the Social Security Administration policy expert, testified
23 before this jury under oath. Correct?

24 A Correct.

25 Q These would also be the right people. Correct?

1 A I don't, I don't know those people, but they would appear
2 to be now, so, yeah.

3 Q Right. And Ms. Nolan and Ms. Hillmann were designated by
4 the Social Security Administration as 30(b)(6) witnesses.
5 Correct?

6 A Yes.

7 Q Okay. And I'll try to hack through the legalese, but a
8 30(b)(6) representative is someone who either has personal
9 knowledge or, through investigation, research, communication,
10 and inquiry, is supposed to obtain actual knowledge. Does
11 that make sense to you?

12 A Yes.

13 Q So Monica Nolan and Heather Hillmann would clearly be the
14 right people to respond to this inquiry about the B-read-only
15 program?

16 A Yeah, I don't know where they fit in the, in the -- over
17 time. I'm not sure where they fit.

18 Q That, that's right. You weren't here for Ms. Nolan or
19 Ms. Hillmann's testimony. Correct?

20 A I caught part of it, anyway, so.

21 Q "Caught part of it."

22 A Yeah.

23 Q Whose testimony?

24 A I was trying to think who it was. I think, I think it
25 was Hillmann, I believe, so.

1 Q You didn't stay for all of it. Correct?

2 A I think it was on one day and I missed part of it, and
3 then I picked it up the next day.

4 Q Did you hear that Ms. Hillmann was the Medicare lead
5 during her testimony?

6 A I think I picked that up, yes.

7 Q Did you pick up that Ms. Hillmann, as part of her
8 inquiry, had communicated with field staff in the Kalispell
9 office, including Terra Whiteman, the Kalispell field office
10 supervisor and manager?

11 A Yeah. I think she said Sonya was gone so they didn't
12 have any contact there, so, yeah.

13 Q Did you hear that Ms. Hillmann conducted interviews and
14 an inquiry of whether the SSA ever taught, directed,
15 explained, or instructed CARD to fill out EHH forms in the way
16 that you were suggesting that the SSA taught, directed,
17 explained, and instructed Tanis Hernandez to fill out those
18 forms?

19 A I wasn't surprised because I, I --

20 Q That's not, that's not my question.

21 A Oh. Go ahead.

22 Q Did you hear their testimony? Did you hear Heather
23 Hillmann's testimony that no one at SSA taught, directed,
24 explained, or instructed to anyone at CARD how to fill out EHH
25 forms for patients who did not have a diagnosis?

1 A Yes.

2 Q So back to your deposition in January of 2022.

3 At your deposition, I asked you who at CARD was present
4 on behalf of CARD for that meeting with Sonya. Right?

5 A Yes.

6 Q And you said Tanis Hernandez, during your deposition.
7 Right?

8 A That's who I thought, yes.

9 Q That's who you said in your sworn deposition.

10 A Said, okay. Said, yeah.

11 Q You heard Tanis Hernandez's sworn deposition testimony
12 that was read into the record during this trial. Correct?

13 A Yes.

14 Q You were here for that. Right?

15 A Yes.

16 Q And you heard Tanis Hernandez state under oath that she
17 would have been the lead person at CARD for these types of
18 discussions with the SSA. Correct?

19 A Yes.

20 Q And during your deposition last year, the only CARD staff
21 member you mentioned that attended this meeting between Sonya
22 and CARD was Tanis Hernandez. Correct?

23 A Yes.

24 Q You didn't mention any other names. Correct?

25 A Correct.

1 Q You had a chance after your deposition to review your
2 testimony and submit corrections in the errata sheet.

3 Correct?

4 A Yes.

5 Q And you did not do that. Correct?

6 A I didn't.

7 Q So Tanis Hernandez. Tanis Hernandez was the only person
8 that apparently you could recall that attended this meeting
9 with Sonya Hymas from the SSA. Right?

10 A Yes.

11 Q Now Tanis Hernandez left CARD in 2015?

12 A It must have been around there. I'm not quite sure on
13 the years.

14 Q That's okay.

15 To the best of your knowledge, Tanis moved to a little
16 town in Washington State somewhere in the shadow of
17 Mt. Rainier. Correct?

18 A Yes.

19 Q Tanis was the very next deposition in this case, I'll
20 represent to you, after your January 19, 2022 deposition.
21 Right?

22 A Right.

23 Q On February 16, 2022, I'll represent to you that less
24 than one month after your deposition, Tanis Hernandez was
25 under oath. Do you have any reason to disagree with me?

1 A No.

2 Q Yeah. And you heard her testimony. Correct?

3 A Yes.

4 Q You heard her testimony from that February 2022
5 deposition. Right?

6 A Yes.

7 Q And she testified that she never, never met with Sonya.
8 Correct?

9 A Correct.

10 Q She testified she never, never met with any SSA official
11 at CARD for a meeting about EHH forms. Correct?

12 A Correct.

13 Q She testified she never met with anyone at SSA to talk
14 about EHH forms. Correct?

15 A Correct.

16 Q She testified that she never was taught, directed,
17 explained to, or instructed how to fill out EHH forms for
18 B-read-only patients. Correct?

19 A Correct.

20 Q And you heard, in her testimony, that I asked her this
21 specific question multiple ways, multiple different times.
22 Correct?

23 A Correct.

24 Q The facts related to Tanis Hernandez and a meeting with
25 SSA that never happened is an undisputed fact in this case as

1 well. Correct?

2 A I did say it at that time, yes.

3 Q And you're aware that there is no dispute from you or
4 CARD that a meeting with Tanis Hernandez and Sonya Hymas to
5 fill out EHH forms in this way ever happened?

6 A No. It didn't happen.

7 MR. DUERK: If we could go to Exhibit 109, page 26?

8 MS. HANENBURG: (Complied with request.)

9 BY MR. DUERK:

10 Q Sir, I'll assert to you that I'm about to put some
11 undisputed facts on the screen in front of you.

12 Just, just to be clear, focusing on paragraph 100, this
13 reads, "Dr. Black testified that the Social Security
14 Administration 'taught' CARD to put incorrect entries on
15 patient EHH forms."

16 That fact is undisputed. Correct?

17 A It doesn't sound right, but I guess I did, so.

18 Q That fact is undisputed in this case. Correct?

19 A Yes.

20 MR. DUERK: If we could go to paragraph 101?

21 MS. HANENBURG: (Complied with request.)

22 BY MR. DUERK:

23 Q "Dr. Black testified that SSA employee Sonya 'taught'
24 CARD staff how to fill out EHH forms for patients with a
25 positive B-read."

1 That fact, also, undisputed. Correct?

2 A Yes.

3 Could I ask you a favor? My hearing aids don't pick up
4 your voice as well, and if you could talk a little slower,
5 please, so I can pick up everything you're saying?

6 Q I will, sir, and I'll step into the microphone. Is this
7 a little better?

8 A Yeah. It's more the speed, though, the voice. I think I
9 hear, you know, your words, but it's just the -- when you go
10 fast, you don't pick the words up as fast, so.

11 Q Understood. I'll beg the jury's patience.

12 Paragraph 102: It is an undisputed fact in this case
13 that "Dr. Black testified that Sonya provided that instruction
14 sometime around 2011, in Libby Montana, at the CARD Clinic."

15 That fact is undisputed in this matter. Correct?

16 A That's correct.

17 Q Paragraph 103: "Dr. Black admitted he was not at the
18 meeting."

19 Did I read that correctly?

20 A Yes.

21 Q And, "Dr. Black admitted he had no record of a meeting
22 with Sonya taking place or any written authorization for CARD
23 to follow the B-reader procedure he described."

24 Correct?

25 A Correct.

1 Q Okay. Now, Dr. Black, in terms of Tanis Hernandez's
2 testimony, I asked her who she consulted with at the Social
3 Security Administration, who she reached out to for advice on
4 this issue, whether any lawyers instructed her that submitting
5 patients on a B-read alone was okay, and she stated that she
6 had not consulted with anyone.

7 You heard that testimony as well. Correct?

8 A Yes.

9 Q And you did not mention in your deposition that you met
10 with anyone at SSA about this issue, either. Correct?

11 A Right. No firsthand.

12 Q No firsthand. And no secondhand, either. You didn't
13 meet with the Social Security Administration to speak with
14 them directly about this issue. Correct?

15 A Correct.

16 Q And, furthermore, this discussion about whether the
17 Social Security Administration approved of this process went
18 no further than Sonya. Correct?

19 A Correct.

20 Q And when we closed out this topic during your deposition
21 testimony, you stated that this meeting happened sometime in
22 2010 or 2011, that that's when the meeting with Sonya
23 occurred. Correct?

24 A Yes.

25 Q Everything in your testimony about a meeting between

1 Tanis Hernandez and Sonya Hymas to fill out EHH forms was
2 false. Correct?

3 A Yes. I was wrong.

4 Q And in terms of any follow-up communication from the SSA
5 between Tanis and the Social Security Administration, Tanis
6 admitted that she had no record, no authorization, no emails,
7 no anything that showed that a communication occurred between
8 Tanis and the SSA about the B-read-only practice, either.
9 Right?

10 A Right. Yes.

11 Q We also heard from Heather Hillmann about this whole
12 topic of whether there was any communication between the SSA
13 and CARD. Were you here for Hillmann's testimony where she
14 said she looked into this, and she never found any evidence
15 that the SSA taught CARD to fill out EHH forms?

16 A Yes. I heard that, yeah.

17 Q Okay. Were you also here for Ms. Hillmann's testimony
18 when she described this practice at CARD of submitting
19 patients who hadn't been diagnosed with an asbestos-related
20 disease as fraud? Did you hear that from her?

21 A I did hear that, yes.

22 Q She said, in several different ways, that that kind of
23 practice would be fraudulent. Correct?

24 A Yes.

25 Q I'd like to turn the page. There are some other

1 undisputed facts in this case that I think might streamline
2 things going forward.

3 If we could look at Exhibit 109, page 4, paragraph 9?

4 MS. HANENBURG: (Complied with request.)

5 BY MR. DUERK:

6 Q "According to CARD, the purpose of the Environmental
7 Health Hazard (EHH) provisions in the Affordable Care Act was
8 to provide benefits for people who were exposed to Libby
9 asbestos, not to provide Medicare benefits to people who are
10 not sick."

11 Would you agree with that statement?

12 A Yes.

13 MR. DUERK: If we could turn to page 3 of
14 Exhibit 109? I'm looking at paragraph 6.

15 MS. HANENBURG: (Complied with request.)

16 BY MR. DUERK:

17 Q "There is no provision stated in Section 1881A of the
18 Affordable Care Act that creates an exception for a patient to
19 be eligible for Medicare benefits without a diagnosis."

20 Did I read that correctly?

21 A Yes.

22 MR. DUERK: If we could turn to paragraph 30 on
23 page 109-10?

24 MS. HANENBURG: (Complied with request.)

25 ///

1 BY MR. DUERK:

2 Q "At CARD it is the individual treating physician who
3 diagnoses asbestos-related disease."

4 Did I read that correctly?

5 A Yes.

6 Q Now you knew all of these facts when you were deposed on
7 January 19, 2022. Is that right?

8 A Yes.

9 Q And you knew all of the facts in Document 109 related to
10 the alleged meeting between Tanis Hernandez and the Social
11 Security Administration. Correct?

12 A I'm sorry; would you --

13 Q That's okay.

14 It's undisputed in this case that there are over a
15 hundred patients who fall into the B-read-only category at
16 CARD. Correct?

17 A Correct.

18 Q In fact, when asked, CARD produced EHH forms for patients
19 who fell into this category to my law office. Correct?

20 A I'm sorry; would you --

21 Q Sure. CARD forwarded 160 patient EHH forms in the
22 category of patients who had no diagnosis of an
23 asbestos-related disease. Correct?

24 A Correct.

25 Q I'm sorry; did you say --

1 A Correct. I'm sorry.

2 Q Okay. So in terms of those patients, it's an undisputed
3 fact in this case that there are over a hundred patients with
4 no diagnosis of asbestos-related disease who nevertheless have
5 been submitted for Medicare benefits. Correct?

6 A As far as clinical diagnosis, correct.

7 Q There are even more patients.

8 If we could go to Exhibit 109, page 37, please? I'm
9 sorry; Exhibit 109, page 37, paragraph 138, please.

10 MS. HANENBURG: (Complied with request.)

11 BY MR. DUERK:

12 Q This reads: "These EHH forms were sent in response to
13 Relator's Request for Production No. 7 related to the 344
14 entries for 'outside read only' patients in CARD's Screening
15 Database referenced in Chris Ekstedt's deposition."

16 Correct?

17 A Yes.

18 Q Okay. I'll try to clean this up somewhat.

19 I'll represent to you that at some point in the discovery
20 process, I learned that there were 344 patient entries in
21 CARD's master dataset that apparently fell into this category
22 of B-read-only or outside-read-only patients. Fair?

23 A Sounds like the number I've heard before.

24 Q And in terms of the EHH forms of patients that fell into
25 this category, CARD forwarded 160 individual EHH patient forms

1 for patients who had no diagnosis of asbestos-related disease
2 but nevertheless had been submitted to the Social Security
3 Administration for Medicare. Correct?

4 A A little slower, please.

5 MR. DUERK: If we can go to paragraph 137?

6 MS. HANENBURG: (Complied with request.)

7 BY MR. DUERK:

8 Q Sir, "CARD forwarded 160 patient EHH forms in the
9 'Medicare Eligible based on an outside read' category to
10 Relator."

11 This fact is undisputed. Correct?

12 A Correct.

13 Q And in terms of those EHH forms, we're talking about
14 patients who did not have a CARD diagnosis of asbestos-related
15 disease. Correct?

16 A Correct.

17 Q Sir, I'd like to turn your attention to some articles
18 that this jury has heard about related to Libby amphibole
19 disease.

20 We heard about some of the articles that you've published
21 in this matter. Correct?

22 A Yes.

23 Q In terms of those articles, one of them is titled "Rapid
24 progression of pleural disease due to exposure to Libby
25 amphibole: 'Not your grandfather's asbestos related

1 disease.'" Correct?

2 A Correct.

3 Q That article was published in November of 2014. Correct?

4 A I think that is right, that time, yes.

5 Q That article focuses on lamellar pleural thickening and
6 five illustrative cases from CARD. Correct?

7 A Yes.

8 Q That article discusses the rapid progression of
9 asbestos-related disease in Libby that you allege is one of
10 the defining features of Libby disease. Correct?

11 A Yes.

12 Q You and Dr. Whitehouse concluded in this article that
13 exposure to Libby asbestos causes disease that is more rapidly
14 progressive and more severe than ordinary asbestos-related
15 disease. Correct?

16 A Dr. Whitehouse and several other investigators were
17 involved in that, so, yes.

18 Q And Dr. Whitehouse, you, and some other authors concluded
19 that Libby asbestos causes disease that is more rapidly
20 progressive and more severe than the usual asbestos-related
21 disease. Correct?

22 A That's one phenomenon, yes.

23 Q Okay. Now in terms of that period of rapid progression,
24 you stated in the article, and you've stated to others over
25 the course of many years, that Libby disease progresses from

1 the earliest sign of detection to severe disease, even death,
2 in a period that sometimes is as little as six years.

3 Correct?

4 A Yes.

5 Q Okay. You and Dr. Whitehouse disclosed no conflicts of
6 interest in that 2014 study. Correct?

7 A Correct.

8 MR. DUERK: Your Honor, I'd like to offer
9 Impeachment Exhibit 272. I intend to use this as a
10 demonstrative only. May I approach?

11 THE COURT: You may.

12 MR. DUERK: (Handing.)

13 THE COURT: Any objection, Mr. Bechtold?

14 MR. BECHTOLD: No, Your Honor.

15 THE COURT: 272 is admitted -- do you wish to have
16 it admitted solely for demonstrative purposes?

17 MR. DUERK: Solely for demonstrative purposes.

18 THE COURT: It is admitted for demonstrative
19 purposes.

20 (Demonstrative Exhibit 272 was received in evidence.)

21 THE CLERK: Am I publishing?

22 THE COURT: It may be published.

23 MR. DUERK: If we could publish page 1 of
24 Exhibit 272?

25 THE CLERK: (Complied with request.)

1 BY MR. DUERK:

2 Q Dr. Black, in terms of this article, I'd just like to
3 highlight the disclosure section here. Do you see it?

4 A Yes.

5 Q Do you see the disclosure section here states that
6 authors Drs. Black, Szeinuk, Whitehouse, Levin, and Flores
7 have no conflicts of interest to disclose?

8 A I see that, yes.

9 Q You would acknowledge that in terms of conflicts of
10 interest for academic papers, conflicts of interest such as
11 cooperating or testifying on behalf of plaintiff's attorneys,
12 receiving gifts or donations from special interests, those are
13 the types of things that should be disclosed in these
14 peer-reviewed academic journals prior to publication.
15 Correct?

16 A I would assume so, yes.

17 Q Not -- I'm not asking if you would assume so. If you
18 know or you don't know, either is fine. But we've heard
19 testimony about multiple articles being submitted for
20 publication by you and others at CARD. Correct?

21 A Yes.

22 Q And in terms of submitting those articles for publication
23 in academic journals, the conflict of interest or the
24 disclosure section is fairly standard. Correct?

25 A That's correct, yes.

1 Q And when it comes to filling in the blanks here with
2 disclosures or conflicts of interest, there's an obligation in
3 the medical community and the academic community to be true,
4 accurate, and complete about disclosures related to conflicts
5 of interest. Correct?

6 A Correct.

7 MR. DUERK: Okay. You can take this off the screen.

8 THE CLERK: (Complied with request.)

9 BY MR. DUERK:

10 Q Doctor, there was a mortality study that was authored in
11 part by Dr. Alan Whitehouse from the CARD Clinic. Correct?

12 A Yes.

13 Q The mortality study began and had its genesis at CARD
14 sometime well before it was published in an academic journal
15 last year. Correct?

16 A Yes.

17 Q And Dr. Whitehouse and you and others worked on the
18 underlying data for that mortality study that was eventually
19 published in 2022 for almost a decade. Fair?

20 A Yes.

21 Q The underlying data for that mortality study was based in
22 part on CARD's records of patient care in Libby, Montana.
23 Correct?

24 A They were CARD patients in the mortality, yes.

25 Q All right. And when that published study came out in

1 2022, it also included a conflict of interest and disclosure
2 section for each of its authors. Correct?

3 A Yes.

4 Q Dr. Black, CARD has a foundation that collects funds that
5 are used to benefit CARD. Correct?

6 A We used to. We no longer do, but we used to have a
7 foundation, yes.

8 Q That CARD Foundation used to serve CARD by raising funds
9 from various individuals and entities. Correct?

10 A Yes, and events and things like that. We would try --
11 the foundation would try to build some reserve for special
12 needs in CARD.

13 Q You've been deposed about the CARD Foundation in the past
14 by me. Correct?

15 A Yes.

16 Q And during your deposition testimony, you were careful to
17 say that CARD doesn't receive direct financial contributions;
18 it is the foundation that receives direct financial
19 contributions. Correct?

20 A Right.

21 MR. DUERK: If we could turn to Exhibit 54, page 1?

22 MS. HANENBURG: (Complied with request.)

23 BY MR. DUERK:

24 Q Sir, CARD has a newsletter that it's published in the
25 past?

1 A (No response.)

2 THE CLERK: You can put it up. It's not in.

3 MR. DUERK: Oh, Exhibit 54 is not in? I apologize.

4 Thank you.

5 I would move the admission of Exhibit 54, CARD
6 newsletter.

7 THE COURT: Any objection?

8 MR. BECHTOLD: No, Your Honor.

9 THE COURT: Fifty-four is admitted --

10 MR. DUERK: Thanks. My apologies.

11 THE COURT: -- and may be published.

12 (Exhibit 54 was received in evidence.)

13 BY MR. DUERK:

14 Q If we could look at Exhibit 54, page 1, do you see
15 something noted as the Libby Montana News Archive?

16 A Yes.

17 Q Sir, you were asked questions about the Montana -- or,
18 I'm sorry, the Libby Montana News Archive during your
19 deposition in January of '22?

20 A I do remember something, some questions, yes.

21 MR. DUERK: If we could blow up the photo and
22 caption here?

23 MS. HANENBURG: (Complied with request.)

24 BY MR. DUERK:

25 Q Sir, does this part of the newsletter talk about a

1 donation to CARD?

2 A Yes.

3 Q In terms of this donation, it's hard to read the check,
4 but the newsletter itself talks about individuals at CARD
5 posing with a check in the amount of \$24,381.94. Correct?

6 A Correct.

7 Q Now this letter indicates that this check was donated to
8 the CARD Clinic by the CARD Foundation. Correct?

9 A Correct.

10 Q CARD has received other donations directly from lawyers.
11 Correct?

12 A Yes.

13 Q And so these, these are funds that did not come through
14 the CARD Foundation itself. Right?

15 A The contributions went to the foundation. You asked me
16 what? I'm sorry.

17 MR. DUERK: I'd offer Exhibit 15. This is likewise
18 a CARD newsletter.

19 THE COURT: Any objection, Mr. Bechtold?

20 MR. BECHTOLD: No objection, Your Honor.

21 THE COURT: Exhibit 15 is admitted.

22 (Exhibit 15 was received in evidence.)

23 MR. DUERK: If we could turn to page 15 of
24 Exhibit 15?

25 MS. HANENBURG: (Complied with request.)

1 BY MR. DUERK:

2 Q In 2016, in September, the CARD Foundation received a
3 \$10,000 donation from Simmons Hanley Conroy, a national law
4 firm based in Illinois. Correct?

5 A Correct. Yes.

6 Q "They are dedicated to their clients, employees and
7 communities who have been affected by asbestos related
8 disease."

9 Correct?

10 A Correct.

11 Q "Simmons Hanley Conroy make it a priority to give back to
12 the people and communities they represent and are one of the
13 nation's leading contributors to mesothelioma cancer research.
14 This was their second \$10,000 donation."

15 Did I read that correctly?

16 A Correct.

17 Q Okay. Now these donations went directly to CARD, not
18 through the foundation. Correct?

19 A Correct.

20 Q So in terms of the times that I deposed you about all
21 donations going through the CARD Foundation, these donations
22 went directly to the clinic. Correct?

23 A Yes.

24 Q These donations here in CARD's newsletter are not the
25 only funds from lawyers that CARD has received through the

1 foundation. Correct?

2 A Correct.

3 MR. DUERK: If we could -- I would offer Exhibit 9
4 into evidence.

5 THE COURT: Any objection?

6 MR. BECHTOLD: No, Your Honor.

7 THE COURT: Exhibit 9 is admitted.

8 (Exhibit 9 was received in evidence.)

9 MR. DUERK: If we can show (indicating) just this
10 portion?

11 MS. HANENBURG: (Complied with request.)

12 BY MR. DUERK:

13 Q Dr. Black, in terms of CARD donations through the years,
14 does Exhibit 9 show different donations from various
15 plaintiffs' attorneys in Montana?

16 A Yes.

17 Q Do we see, in 2012, a \$50,000 donation from a plaintiff's
18 attorney?

19 A Yes.

20 Q In 2013, do we see a \$10,000 donation from the same
21 plaintiff's attorney?

22 A Yes.

23 Q In 2014, do we see a \$5,000 donation from a plaintiff's
24 attorney?

25 A Yes.

1 Q In 2014, do we see a \$30,000 donation that's described in
2 parentheses as the "Mortality Study Grant"?

3 A Yes.

4 Q We'll get back to that in a moment.

5 But in 2015, do we see another \$10,000 donation?

6 A Yes.

7 Q Do we see, in 2016, a \$3,000 donation?

8 A Yes.

9 Q In 2017, another \$3,000 donation?

10 A Yes.

11 Q And then again in 2017, do we see a donation from what's
12 titled the Kovacich Law Firm for \$5,000?

13 A Correct.

14 Q Over the years, do we see a total donation amount of
15 \$116,000 from plaintiffs' attorneys?

16 A Yes.

17 Q Now these are donations, to be clear, that were made to
18 the CARD Foundation and then funneled to CARD. Correct?

19 A Yes.

20 Q This list of donations in Exhibit 9 does not include the
21 two \$10,000 donations from a national plaintiff's law firm.
22 Correct?

23 A Correct.

24 Q And this list of donations also does not capture the
25 donation to the CARD Foundation in the amount of \$24,000 for

1 the new parking lot. Correct?

2 A Correct.

3 Q Now back to the mortality study. We see a \$30,000
4 donation for the mortality study referenced in these attorney
5 donations. Correct?

6 A Correct.

7 Q One of the projects funded by the CARD Foundation was
8 Dr. Alan Whitehouse's mortality study. Correct?

9 A Correct.

10 Q Dr. Whitehouse's mortality study was eventually published
11 in some form in an academic journal. Correct?

12 A Correct.

13 Q Dr. Alan Whitehouse was paid approximately \$30,000 for
14 that study. Right?

15 A I don't know that for a fact, but he did receive
16 reimbursement for his work, yes.

17 MR. DUERK: I'd move the admission of Exhibit 116.
18 This is an excerpt from CARD's general ledger dated
19 December 31, 2014.

20 THE COURT: Any objection?

21 MR. BECHTOLD: No, Your Honor.

22 THE COURT: 116 is admitted.

23 (Exhibit 116 was received in evidence.)

24 BY MR. DUERK:

25 Q Do you see Exhibit 116 on your screen, Dr. Black?

1 A 116? 160?

2 Q Exhibit 116 --

3 A Oh. Got it here, yeah.

4 Q -- is indicated on your screen.

5 A Yeah.

6 Q Correct?

7 A Yeah.

8 Q If we could continue down towards the bottom of this
9 exhibit, sir, do you see several columns, a column for date
10 range, a column for references, and columns related to check
11 amounts in this exhibit?

12 A Yes.

13 Q Do you see that on or about August 24, 2014, there was a
14 check paid in the amount of \$30,000 that apparently looks like
15 this check was paid by CARD to Dr. Alan Whitehouse?

16 MR. BECHTOLD: Misstates the testimony, Your Honor.

17 MR. DUERK: Let me rephrase. I'll double-check.

18 BY MR. DUERK:

19 Q Now in terms of Dr. Whitehouse's mortality study, are you
20 aware of whether or not Dr. Whitehouse was paid for that
21 mortality study?

22 A I think that that money went to do his work on it, yes.

23 Q Understood.

24 And here I'm specifically asking whether that set of
25 \$30,000 funds went into Dr. Whitehouse's pocket or went into

1 CARD's pocket that came from plaintiffs' attorneys.

2 A No, it would go to Dr. Whitehouse.

3 Q Okay. Now in terms of the mortality study itself, there
4 were also CARD resources of the clinic that were used to
5 assist with that study. Correct?

6 A CARD -- you said CARD what?

7 Q CARD resources such as staff time, clinic staff efforts
8 to help with Dr. Alan Whitehouse's work on the mortality
9 study.

10 A Yes.

11 Q And plaintiff attorneys paid for those expenses, too.
12 Correct?

13 A I don't know about that. I'm not sure.

14 MR. DUERK: I would offer Exhibit 117 into evidence,
15 an email from Jon Heberling to Tanis Hernandez, November 18,
16 2011.

17 THE COURT: Any objection?

18 MR. BECHTOLD: No, Your Honor.

19 THE COURT: 117 is admitted.

20 (Exhibit 117 was received in evidence.)

21 MR. DUERK: If we could look at the bottom of
22 Exhibit 117?

23 MS. HANENBURG: (Complied with request.)

24 BY MR. DUERK:

25 Q Now, Dr. Black, you were familiar with a plaintiff's

1 attorney named Jon Heberling?

2 A Yes.

3 Q Okay. This appears to be an email sent on or about
4 November 18, 2011 from Tanis Hernandez at CARD to what appears
5 to be Jon Heberling. Fair?

6 A Yes.

7 Q I'd like to read this. Please tell me if I've read it
8 correctly.

9 "Jon, I talked with Brad regarding how best to move
10 forward with the mortality study. This is a recap of the plan
11 as I just wanted to make sure that we are all on the same
12 page.

13 "1) CARD staff will scan records of 62 people onto disk
14 to be given directly to Alan Whitehouse."

15 Have I read that correctly so far?

16 A Yes.

17 Q "2) Brad suggested that Alan contact him directly to
18 request the information.

19 "3) We will need to ask staff to work outside of their
20 regularly scheduled hours to do this project. We wondered if
21 your firm would be willing to offer compensation like when we
22 the [sic] spouse screening project for the state settlement.
23 Would you be agreeable to a rate of \$25/hour to cover staff
24 time and supplies?"

25 Did I read that correctly?

1 A Yes.

2 MR. DUERK: If we could scroll up to Mr. Heberling's
3 response?

4 MS. HANENBURG: (Complied with request.)

5 BY MR. DUERK:

6 Q Mr. Heberling states, related to the CARD mortality
7 study, "Tanis, yes we can pay. I am sending the recap on to
8 Dr. W."

9 Did I read that correctly?

10 A Yes.

11 Q So in addition to the \$30,000 paid to Dr. Whitehouse,
12 there were plaintiffs' attorneys who paid for staff time at
13 CARD to do work on the mortality study. Correct?

14 A Correct.

15 Q The mortality study was used by plaintiff attorneys to
16 make the point that Libby amphibole was a dangerous substance
17 and created a dangerous disease. Correct?

18 A No.

19 Q If we could turn to your deposition at page 120? I'm
20 sorry. I'm sorry; 130, line 2 to line 8.

21 I'll read it. Please tell me if I read it correctly.

22 "And the mortality study was used by plaintiffs'
23 attorneys, some of the plaintiffs' attorneys who paid for that
24 mortality study, to make the point that Libby amphibole was a
25 dangerous mineralogical substance and created a dangerous

1 disease; correct?"

2 Answer: "Yeah."

3 Did I read that correctly?

4 A It does say that here, yes.

5 Q Now when it comes to that published study itself, the
6 "Case-fatality study of workers and residents with
7 radiographic asbestos disease in Libby, Montana" was first
8 published December 27, 2021. Correct?

9 A Yes.

10 Q The authors of the study, in addition to Alan C.
11 Whitehouse, Dr. Whitehouse, were Dr. Arthur L. Frank,
12 Dr. Albert Miller, you, and others. Correct?

13 A Yes. Well, Dr. Whitehouse had passed away --

14 Q Understood.

15 A -- and we all finished, we finished the work on that, so.

16 MR. DUERK: Your Honor, I'd like to publish
17 Exhibit 271 for demonstrative purposes only as an impeachment
18 exhibit.

19 THE COURT: Any objection, Mr. Bechtold?

20 MR. BECHTOLD: Not to a demonstrative exhibit,
21 Your Honor.

22 THE COURT: It is admitted for demonstrative
23 purposes and may be published.

24 (Demonstrative Exhibit 271 was received in evidence.)

25 MR. DUERK: If we could put Exhibit 271, page 1, on

1 the screen?

2 MS. HANENBURG: (Complied with request.)

3 BY MR. DUERK:

4 Q Dr. Black, do you see Exhibit 271, page 1, on the screen
5 in front of you?

6 A Yes.

7 Q Is this essentially the culminating result of efforts on
8 the mortality study?

9 A Yes.

10 MR. DUERK: If we could publish the byline, so to
11 speak? Blow up the byline.

12 MS. HANENBURG: (Complied with request.)

13 BY MR. DUERK:

14 Q Dr. Black, I'd like to focus on just a few of the
15 coauthors of this study.

16 We see Dr. Alan Whitehouse's name here. Correct?

17 A Yes.

18 Q Now Dr. Albert Miller, M.D., Dr. Miller is one of the
19 physicians that CARD intends to call as an expert witness at
20 this trial. Correct?

21 A Yes.

22 Q And Dr. Arthur L. Frank, M.D. is also another witness
23 that CARD intends to provide testimony at this trial. Right?

24 A Yes.

25 Q I'd like to continue to the last page of this study,

1 what's marked as Exhibit 271, page 11.

2 Sir, do you see the conflict of interest section of this
3 study on page 11?

4 A Yes.

5 Q It says: "Authors Alan C. Whitehouse, Arthur L. Frank,
6 Gregory Loewen, Albert Miller, and Charles B. Black have
7 provided expert medical consultative services for several law
8 firms in behalf of CARD or for other asbestos disease
9 patients."

10 Did I read that correctly?

11 A Yes.

12 Q Nowhere on this conflict of interest section does it
13 indicate in any way, shape, manner, or form that the
14 underlying work on this study was performed based on payments
15 from plaintiff attorneys. Correct?

16 A Correct.

17 Q Dr. Black, when I deposed you in January of 2022, you
18 denied that CARD has referred patients to plaintiff attorneys
19 in Montana. Correct?

20 A Correct.

21 MR. DUERK: If I could, I will offer Exhibit 10 into
22 evidence.

23 THE COURT: Any objection to Exhibit 10,
24 Mr. Bechtold?

25 MR. BECHTOLD: No, Your Honor.

1 THE COURT: Exhibit 10 is admitted and may be
2 published.

3 (Exhibit 10 was received in evidence.)

4 MR. DUERK: If we could blow this up, please?

5 MS. HANENBURG: (Complied with request.)

6 BY MR. DUERK:

7 Q Now despite the testimony from you denying that CARD has
8 referred patients to plaintiff law firms in Montana, I'd like
9 to read the text of this article -- or the text of this email.
10 This is from Tracy McNew to all staff at the CARD Clinic dated
11 January 8, 2018. Correct?

12 A Yes.

13 Q It reads: "Here is a link to the Daily Inerlake [sic]
14 article that details legal concerns effecting [sic] some of
15 our patients."

16 Did I read that correctly?

17 A Correctly, yeah.

18 Q "If patients ask about this, please refer them to a
19 lawyer."

20 Did I read that sentence correctly?

21 A Yes.

22 Q It continues: "The two lawyers that are representing the
23 majority of Libby asbestos cases," and it identifies those
24 lawyers.

25 Correct?

1 A Yes.

2 Q Now it does say: "Please do not recommend a lawyer as a
3 representative of CARD."

4 Correct?

5 A Yes.

6 MR. DUERK: You can take it down.

7 MS. HANENBURG: (Complied with request.)

8 BY MR. DUERK:

9 Q Doctor, the language of the mortality study article, when
10 it was published in 2021, stated that you provided consulting
11 services to plaintiffs' attorneys in the past. Correct?

12 A Yes.

13 Q You have also provided expert witness testimony on behalf
14 of plaintiffs in the past as well. Correct?

15 A I have been -- testimony on behalf of patients.

16 Q Yes. You provided testimony in the *Holly Warboys* case,
17 for example. Correct?

18 A Yes.

19 Q In Ms. Warboys' case, you diagnosed her with
20 asbestos-related disease. Correct?

21 A Correct.

22 Q And I'm mentioning her name here in open court because
23 this is a published decision. You understand that. Correct?

24 A Yes.

25 Q In Ms. Warboys' case, despite the fact that CARD had

1 diagnosed her with asbestos-related disease, no other treating
2 physician agreed with you. Correct?

3 A I don't know.

4 Q You don't recall that no radiologist found any evidence
5 of asbestos-related disease on CT scans or chest X-rays in
6 Ms. Warboys' case?

7 A I'm aware of some of those, but I think -- my
8 understanding was there was another reader that had recognized
9 them, but I don't have the details, so.

10 Q Fair enough. But you found that Ms. Warboys had lamellar
11 pleural thickening in that case. Correct?

12 A Pleural thickening, yes.

13 MR. DUERK: If we could, I would move the admission
14 of Exhibit 114. This is the workers' comp decision on the
15 *Holly Warboys* case.

16 THE COURT: Any objection?

17 MR. BECHTOLD: No, Your Honor.

18 THE COURT: 114 is admitted.

19 (Exhibit 114 was received in evidence.)

20 MR. DUERK: If we can turn to page 5 of Exhibit 114?

21 MS. HANENBURG: (Complied with request.)

22 BY MR. DUERK:

23 Q Dr. Black, I'd like to show you a couple of statements
24 that came up in the *Warboys* case.

25 If we could focus on paragraphs 25 and 26? I'm sorry; if

1 we could focus on 25, 26, and 27, please?

2 MS. HANENBURG: (Complied with request.)

3 BY MR. DUERK:

4 Q Dr. Black, focusing on paragraph 27 first, on the issue
5 of lamellar pleural thickening, "Dr. Black explained that the
6 CARD Clinic's working group coined the term 'lamellar' pleural
7 thickening to describe a smooth, thin pleural thickening as
8 opposed to a 'standard diffuse pleural thickening.'"

9 Did I read that correctly?

10 A Yes.

11 Q Apparently you testified that "'lamellar pleural
12 thickening is in itself not a disease, it is a characteristic
13 of fibrosis, but it progresses and then becomes thick, so it
14 does lose its thinner nature, and some people can die just
15 basically [from] what appears to be restrictive pleural
16 disease.'"

17 Did I read that accurately?

18 A Yes.

19 Q So the topic of lamellar pleural thickening did come up
20 in the *Holly Warboys* case. Correct?

21 A Yes.

22 Q In this case, you acknowledged that Ms. Warboys' CT scan
23 by itself showed "a 'nonspecific thickening of the lining of
24 the pleura.'"

25 Did I read that correctly?

1 A Yes.

2 Q And in this case, you testified that "the thickening is
3 too thin to measure its density on a CT scan"; thus, you rely
4 solely on what you see.

5 Did I read that right?

6 A Yes. My experience of what I see, yes.

7 Q Yes.

8 And in terms of testimony about lamellar pleural
9 thickening, you were in the courtroom for Dr. Haber's
10 testimony yesterday. Correct?

11 A Yes.

12 Q Dr. Haber had some testimony about lamellar pleural
13 thickening and whether or not there were any objective or
14 characteristic signs of lamellar pleural thickening that had
15 been described by you or by any other medical authority
16 related to the disease's specific characteristics. Correct?

17 A No, no other -- I'm sorry. Let me -- I didn't get all of
18 that. I'm sorry.

19 Q That's okay, Doctor. I'll back up.

20 First, when it comes to lamellar pleural thickening, no
21 other physician in the country has diagnosed lamellar pleural
22 thickening in any patient. Correct?

23 A I'm not aware of that, no.

24 Q And in terms of lamellar pleural thickening, we've heard
25 testimony from multiple witnesses in this case that they can't

1 see it. Correct?

2 A Correct.

3 Q In terms of Dr. Haber's testimony, you heard him testify
4 that in terms of any kind of description from you about
5 lamellar pleural thickening, he has not heard from you or from
6 anyone else any of the specific diagnostic characteristics of
7 what would constitute lamellar pleural thickening other than
8 it's thin and it's in the pleura. Correct?

9 A That's what he said, yes.

10 Q Right. And in terms of anything that you have said about
11 lamellar pleural thickening, in terms of categorizing how
12 thick or thin lamellar pleural thickening is, you have never
13 published a range of how thick lamellar pleural thickening is
14 in terms of millimeters. Correct?

15 A Not on a larger article, no.

16 Q Right. And there's never been a peer-reviewed or
17 control-group study related to lamellar pleural thickening.
18 Correct?

19 A Correct.

20 Q In terms of detecting lamellar pleural thickening, aside
21 from you, now, lamellar pleural thickening is something that
22 is too thin to measure its density on a CT scan; thus, the
23 observer has to rely solely on what they see with their eyes,
24 according to you. Correct?

25 A Correct.

1 Q So there's no way, according to you, to verify that
2 lamellar pleural thickening exists when relying on the typical
3 measures for determining density on the lining of a pleura
4 with CT-scan tools. Correct?

5 A (No response.)

6 Q Did I lose you?

7 A Yeah. I didn't follow that.

8 Q I apologize.

9 A Yeah.

10 Q Sir, you're familiar with the term "Hounsfield units."
11 Correct?

12 A Yes.

13 Q You're familiar with the ability to use the
14 Hounsfield-unit density scale on a CT scan. Correct?

15 A Yes.

16 Q In terms of using the Hounsfield-unit density tool on a
17 CT scan, you would move the cursor on the screen of the CT and
18 put a target on the tissue that's density you want to measure.
19 Correct?

20 A Correct.

21 Q And at the bottom of the CT-scan screen, when you place
22 that target on the affected tissue, you'll see a reading in
23 Hounsfield-unit density scale numbers at the bottom of that
24 screen. Correct?

25 A Yes.

1 Q And you heard Dr. Becker's testimony about the method for
2 using that Hounsfield-unit target to determine whether there
3 is pleural thickening on the lining of someone's lungs.

4 Correct?

5 A I heard that, yes.

6 Q Yes. And you've looked at Hounsfield-unit measurements
7 in the past. Correct?

8 A Yes.

9 Q Okay. But you have not been formally trained as a
10 radiologist in terms of using any of these tools on a CT scan.
11 Correct?

12 A I have used them for 20 years, so that's a lot of
13 experience with it, so. Yeah, but not a radiologist, no.

14 Q Not my question.

15 A Yeah.

16 Q In terms of being trained as a radiologist, you are not a
17 radiologist. Correct?

18 A Correct.

19 Q You've not done a residency in radiology. Correct?

20 A Correct.

21 Q You have not worked in a radiology clinic. Correct?

22 A Correct.

23 Q You could not be hired as a radiologist to work in a
24 radiology clinic. Correct?

25 A Correct.

1 Q You have never had privileges at any hospital, clinic, or
2 any other medical setting to work as a radiologist. Correct?

3 A Correct.

4 Q So in terms of the Hounsfield-unit scale and the target
5 on a CT scan, that's not a tool that you regularly employ,
6 yourself. Correct?

7 A If it's of value, I do, yes.

8 Q And in this case, if you were to put a target directly on
9 pleural thickening or tissue that you suspect would be likely
10 pleural thickening, that Hounsfield-unit target would show you
11 whether or not the density of that tissue indicated pleural
12 thickening or merely pleural fat. Correct?

13 A It depends on the thickness.

14 Q Again, I'm not talking about the thickness here. I'm
15 talking about the tissue.

16 If you place the bull's-eye target on pleural fat, the
17 Hounsfield-unit measurement would indicate that tissue is
18 lighter than water. Correct?

19 A Yes.

20 Q And in terms of fibrotic tissue or scar tissue or any
21 other tissue, if you place the Hounsfield-unit bull's-eye
22 right on that tissue, that would have a different reading
23 under the Hounsfield-unit scale than pleural fat. Correct?

24 A Yes.

25 Q That tissue would be heavier than water. Correct?

1 A Yes.

2 Q Your testimony and your expert opinion in the *Holly*
3 *Warboys* case was that the thickening was too thin to measure
4 its density on a CT scan; thus, you have to rely solely on
5 what you see. Correct?

6 A That is correct.

7 Q Ms. Warboys, we heard testimony -- and I want to be
8 respectful here, but the testimony was that she had a fairly
9 significant body mass index. Fair?

10 A Yes.

11 Q And in individual patients with a high BMI, or body mass
12 index, those people are -- well, at a BMI of over 50 was the
13 testimony from Dr. Haber.

14 Ms. Warboys had a fair amount of fatty tissue in her
15 thoracic region. Fair?

16 A Fair, yes.

17 Q Okay. Now in the *Warboys* case, there were several other
18 experts that testified about what they saw in terms of
19 Ms. Warboys' alleged pleural thickening. Correct?

20 A I wasn't directly involved with that. I just -- so I, I
21 don't know who that would be.

22 MR. DUERK: If we could go to the top of this page?
23 I'd like to continue to page 114 -- Exhibit 114, page 6,
24 please.

25 MS. HANENBURG: (Complied with request.)

1 BY MR. DUERK:

2 Q Sir, one of the other medical experts in this case was
3 Dr. Stephen Becker, a radiologist in Libby that is well known
4 to this jury at this point. Correct?

5 A Yes.

6 Q Dr. Becker and also Dr. Steven Haber provided testimony
7 in the *Warboys* case. Correct?

8 A Yes.

9 Q Both of those witnesses in the *Warboys* case said that the
10 findings on CT indicated that Ms. Warboys had pleural fat.

11 I believe Dr. Becker -- or Dr. Haber's testimony the
12 other day was that there was an abundance of pleural fat in
13 Ms. Warboys' case. Correct?

14 A Yes.

15 MR. DUERK: If we could go back to Exhibit 114,
16 page 5?

17 MS. HANENBURG: (Complied with request.)

18 MR. DUERK: Thank you.

19 BY MR. DUERK:

20 Q Now pleural fat in not just Ms. Warboys' case but in
21 hundreds of other cases involving Libby patients -- pleural
22 fat is a fairly common finding among the CARD patients that
23 you've seen. Correct?

24 A Yes.

25 Q Pleural fat does not equal asbestos-related disease.

1 Correct?

2 A Correct.

3 Q The alternative, plausible cause for the thickening that
4 you saw in Ms. Warboys' case was pleural fat, and you've even
5 testified that it is very difficult to see the difference
6 between pleural fat and pleural thickening. Correct?

7 A It's challenging.

8 Q Yes.

9 A No question. Yes.

10 Q You've testified that a lot of times lamellar pleural
11 thickening could be mistaken for pleural fat. Correct?

12 A Sure. In certain cases, yes.

13 Q You are the only one who has difficulty distinguishing
14 lamellar pleural thickening, alleged by you, and pleural fat?
15 That certainly was the situation in the *Warboys* case.

16 Correct?

17 A In that case, yes.

18 Q Dr. Becker, Dr. Haber, the other physicians in that case
19 except for, I believe, a Dr. Schonfeld, who was a forensic
20 expert, neither Dr. Haber nor Dr. Becker had any difficulty
21 distinguishing pleural fat from what you call lamellar pleural
22 thickening in Holly Warboys' case. Correct?

23 A Correct.

24 Q And in other cases -- in fact, hundreds of other cases --
25 where you have found lamellar pleural thickening, Dr. Becker

1 and other radiologists have said to you, in patient treatment
2 records, to other colleagues, "This is not lamellar pleural
3 thickening. This is pleural fat." Correct?

4 A That's their opinion, yes.

5 Q And that opinion is one that you've been aware of for
6 years. Correct?

7 A There's varied opinion all over. In the radiologic
8 reads, there's lots of differences in the opinions on that, so
9 I don't think it's just everybody, so. I see it read
10 differently.

11 Q You heard my question.

12 A Oh, okay. Go ahead. I'll try to get it right here, so.

13 Q You're aware that other doctors have said for years that
14 they don't agree with your opinion that pleural fat is
15 lamellar pleural thickening in your view. Correct?

16 A I don't think it is, either. Correct.

17 Q Okay. And you heard Liz Voorhies' testimony this
18 morning. Correct?

19 A Yes.

20 Q You heard Tami Reatz's testimony this morning. Correct?

21 A Yes, yes.

22 Q And Tami Reatz testified that at CARD, you told her and
23 other people that other doctors didn't know what they were
24 doing when it came to doing these reads. Correct?

25 A I didn't say it like that, but, yes, I did tell them the

1 difference, but I indicated that there was a lack of
2 understanding.

3 Q Okay. Now in terms of the *Holly Warboys* case, in terms
4 of what you said about the CT scan itself and whether or not
5 you could see it, you offered "if one were to just look at
6 that" -- and by "that" I mean nonspecific thickening of the
7 lining of the pleura. "[I]f one were to just look at that
8 without a [Libby] exposure history, one would really not be
9 able to diagnose."

10 That was your testimony in *Warboys*. Correct?

11 A Yeah. It follows ATS criteria, so.

12 Q Right. And when it comes to ATS criteria, if you didn't
13 have exposure history and you only looked at Holly Warboys'
14 CT scan, if you just looked at that scan without an exposure
15 history, even you wouldn't be able to diagnose. Correct?

16 A I think we've talked about a CT not --

17 Q I'm not asking --

18 A Okay.

19 Q -- for explanation.

20 My question was: Even you would not have been able to
21 diagnose lamellar pleural thickening in Holly Warboys' case if
22 you didn't have an exposure history. Right?

23 A Right.

24 Q So I want to focus on one element of the three ATS
25 criteria. Those are: signs of structural abnormality on a CT

1 or chest X-ray. Correct?

2 A Correct.

3 Q That's one element. If you don't have that element, you
4 don't have disease. Right?

5 A Right.

6 Q The other two elements are: exposure history and a
7 differential diagnosis. Fair?

8 A Yes.

9 Q Here, you are saying that if you were to just look at the
10 radiographic scan, if you were to just look at the CT scan,
11 even you wouldn't really be able to diagnose. Correct?

12 A I don't think most people could, on nonspecific pleural
13 thickening, be able to know a hundred percent --

14 Q Right.

15 A -- without the rest of --

16 Q But the --

17 A -- the other pieces. You need all of the three
18 determinants of the diagnosis.

19 Q I'm not focusing on the other pieces right now.

20 A Yeah.

21 Q I'm only focusing on structural abnormality. Do you
22 understand that?

23 A Yes.

24 Q And here, even in Holly Warboys' case, you wouldn't have
25 even been able to diagnose her without referencing her

1 exposure history. Correct?

2 A No. Obviously we take an exposure history first and
3 decide if we might have a high likelihood of finding an
4 abnormality. Then we go -- when we look at -- for structural
5 abnormality, when we get nonspecific pleural thickening, you
6 cannot make a diagnosis unless you know strong -- you have
7 strong confidence that that change you're seeing is a
8 structural change from asbestos.

9 Q Exactly right.

10 A Yes.

11 Q But here is what I want to highlight: You just said
12 unless you have exposure history with nonspecific lamellar
13 pleural thickening, you cannot make a diagnosis. Correct?

14 A (No response.)

15 Q That's what you just said.

16 A Without what, now?

17 Q Without --

18 A An exposure history?

19 Q -- exposure history.

20 A Okay. Right. Right.

21 Q Right.

22 A Right. You wouldn't.

23 Q We're on the same page.

24 THE COURT: Mr. Duerk, it's 12:10. Are we at a
25 point where we could take a noon recess?

1 MR. DUERK: Of course, Your Honor.

2 THE COURT: All right.

3 We'll be in recess until 1:15.

4 (Recess taken from 12:14:39 to 13:19:29.)

5 (Open court.)

6 (Jury present.)

7 THE COURT: Please be seated.

8 Mr. Duerk.

9 MR. DUERK: Thank you, Your Honor.

10 BY MR. DUERK:

11 Q Dr. Black, you heard testimony from Dr. Haber in which he
12 said that in order to be considered a qualified physician, one
13 must follow the standards of care. Correct?

14 A No.

15 Q You didn't hear him say that?

16 A No.

17 Q Okay. Let's go about it this way.

18 You would agree that in order to be considered a
19 qualified physician, you must follow the standards of care.
20 Correct?

21 A We call them the guidelines of care, but, yes.

22 Q Okay. In terms of those standards of care, within the
23 general field of medicine, you would agree that there are
24 standards of care within the practice of medicine generally
25 overall. Correct?

1 A Like I say, they're guidelines, yes.

2 Q And you would agree that the standard of care can be
3 defined as a diagnostic and treatment process that a clinician
4 must follow for a certain type of patient, illness, or
5 clinical circumstance. Correct?

6 A They're guidelines, once again, but, yes.

7 Q The standard of care can be defined as the level at which
8 the average, prudent provider would practice within a given
9 field of medical specialty; would you agree?

10 A Yes.

11 Q Would you agree that a qualified physician is one who
12 follows the standards of care?

13 MR. BECHTOLD: Objection, Your Honor.

14 THE COURT: On what grounds?

15 MR. BECHTOLD: Legal conclusion.

16 THE COURT: Overruled.

17 BY MR. DUERK:

18 Q Doctor, I'll ask the question again.

19 Would you agree that a qualified physician is one who
20 follows the standards of care?

21 A Once again, they follow guidelines.

22 Q So, sir, are you disputing that a qualified physician
23 would follow the standards of care?

24 A I think there's not, there's not rigid standards in
25 medicine. They're guidelines that we should abide, try to

1 abide by.

2 Q Well, there are rigid standards of care in the field of
3 medicine in terms of first doing no harm. Correct?

4 A Well, correct, yes.

5 Q That is a rigid guideline stated in the Hippocratic Oath
6 itself.

7 A Yes.

8 Q Fair?

9 A Fair.

10 Q And there are other very clear guidelines within the
11 field of medicine. For example, you cannot call yourself a
12 qualified physician if you ignore the standards of care.

13 Correct?

14 A Yes.

15 Q That sounded to me a bit equivocal.

16 Would you agree that a qualified physician is one who
17 follows the standards of care for medicine?

18 A Yes.

19 Q Would you agree that the standards of care for qualified
20 physicians are not optional?

21 A Yes.

22 Q Would you agree that a qualified physician is one who
23 does not knowingly deviate from the standards of care?

24 A Yes.

25 Q Would you agree that a qualified physician would not bill

1 anyone for unnecessary services?

2 A Yes.

3 Q Would you agree that a qualified physician does not
4 perform medically unnecessary services?

5 A Yes.

6 Q Would you agree that a qualified physician uses the most
7 accurate and thorough diagnostic methods and tests?

8 A Yes.

9 Q Would you agree that a qualified physician shares true,
10 accurate, and complete information with his or her patients
11 and the government?

12 A Yes.

13 Q In terms of the standards of care, I'd like to speak
14 briefly just about what I'll call the specialist's standards
15 of care.

16 Would you agree that in order to be deemed a qualified
17 physician, a doctor who practices outside his or her field of
18 specialty must conform to that specialist's standards of care?

19 MR. BECHTOLD: Relevance, Your Honor.

20 THE COURT: Overruled.

21 BY MR. DUERK:

22 Q Doctor, would you agree with that general proposition?

23 A I'm sorry; what was it, again?

24 Q Sir, let's go about it this way. I'll give you a
25 hypothetical just to explain what I'm getting at. Okay?

1 If a patient comes to you with an orthopedic injury, or
2 comes to a general practitioner, and that general practitioner
3 elects to perform orthopedic surgery on that patient and the
4 physician is not, herself or himself, a surgeon, essentially
5 that doctor would buy the specialist's standard of care for an
6 orthopedic surgeon. Would you agree?

7 A Yes.

8 Q Would you agree that the standard of care for diagnosing
9 asbestos-related disease is set forth by the American Thoracic
10 Society guidelines?

11 A Once ag- -- oh. Yes.

12 Q The standards of care for reading radiographic studies to
13 detect asbestos-related disease are also set forth by the
14 National Institute for Occupational Safety and Health.
15 Correct?

16 A I don't know that. I'm not sure.

17 Q You don't know that.

18 A I'm not sure about that, right.

19 Q And you are likewise not sure about the standards of care
20 for radiologists based on the standards promulgated by the
21 American College of Radiology. Correct?

22 A I'm sorry; you said not or -- would you say that?

23 Q That's okay.

24 Doctor, you are not, yourself, a radiologist, as we have
25 established. Correct?

1 A Correct.

2 Q And you are not a member of the American College of
3 Radiology. Correct?

4 A Right.

5 Q You do not recall ever reading the American college of
6 radiologists' standards of care. Correct?

7 A Correct.

8 Q However, you would agree that the standards of care for
9 radiologists are set forth in the ACR, the American college of
10 radiologists' standards of care. Correct?

11 A Yes.

12 Q Would you agree that in terms of the standards of care
13 for NIOSH-certified B-readers, NIOSH-certified B-readers also
14 have standards of care that they must abide by in order to be
15 determined qualified physicians?

16 A Standards of care? For a B-reader?

17 Q Yes.

18 A I don't know of those. I don't know.

19 Q Have you ever reviewed the B-reader ethics, which have
20 already been presented as evidence in this case?

21 A Yeah. I just didn't know it was called a standard of
22 care. There seems to be a clinical standard in the B-reader
23 program that's certainly different than that.

24 Q Are you aware of the B-reader ethics that state that a
25 B-reader will not have a read that equals a diagnosis of

1 asbestos-related disease or any other of the diseases in the
2 pneumoconiosis family?

3 A I am not familiar with the B-reader system.

4 Q And you would defer to B-readers on the -- that front of
5 the B-reader code of ethics. Correct?

6 A Do I -- would you ask that a little differently, please?

7 Q Sure.

8 Dr. Haber is a B-reader. Correct?

9 A That's what he said, yes.

10 Q Do you have any reason to doubt him?

11 A No. I just said that's what he said, yes.

12 Q In terms of his certification as a NIOSH-certified
13 B-reader, he is one of approximately 200-plus B-readers in the
14 United States and one of only approximately 300 B-readers in
15 the world. Correct?

16 A I don't know this. I'm not sure of those facts, though.

17 Q Regardless, if Dr. Haber testified in front of this jury
18 that the B-reader code of ethics state that a B-reader's
19 interpretation should not be considered a diagnosis, would you
20 have any reason to disagree with him?

21 MR. BECHTOLD: Objection. Misstates the testimony.

22 THE COURT: Well, the jury, I'm sure, remembers the
23 testimony. I'm gonna overrule the objection.

24 BY MR. DUERK:

25 Q Go ahead.

1 A (No response.)

2 Q Sir, in terms of the B-reader code of ethics, would you
3 have any reason to disagree with Dr. Haber's testimony that a
4 B-reader's interpretation on a B-read --

5 A I don't know --

6 Q -- should not be considered a diagnosis?

7 A I don't know how the B-readers define that. I have not,
8 I have not seen all that information, so.

9 Q And in terms of deferring to Dr. Haber on that point, a
10 NIOSH-certified B-reader, would you defer to Dr. Haber related
11 to his interpretation and view on the B-reader code of ethics,
12 a document which apparently you have not seen?

13 A Right. I haven't seen it.

14 Q Okay. And so you wouldn't oppose or contradict
15 Dr. Haber's testimony on that point?

16 A I don't know enough about it to even respond to that.

17 Q Okay.

18 A qualified doctor would not deprive, discourage, or deny
19 patients of a second opinion. Correct?

20 A Correct.

21 Q A qualified doctor shares a differential diagnosis with
22 his or her patients under the standard of care. Correct?

23 A Correct.

24 Q A qualified doctor educates patients about reasonable
25 medical alternatives involving treatment under the standard of

1 care. Agree?

2 A Yes.

3 Q And that would include reasonable alternative treatments
4 to opioid, medical -- or opioid medication. Correct?

5 A Correct.

6 Q Would you agree that patients rely on doctors who have
7 superior medical knowledge and a greater understanding of
8 information related to medical issues than the patient him- or
9 herself?

10 A That was too fast. Can you say that a little slower,
11 please?

12 Q Doctor, would you agree that patients rely on doctors who
13 have superior medical knowledge and a greater understanding of
14 information related to medical issues than the patient himself
15 or herself?

16 A Yes, in general. Yeah.

17 Q A qualified doctor would refer a patient for a second
18 opinion in a complex case under the standards of care.
19 Correct?

20 A Yes. If there's a complex case that they are unsure of,
21 they would do that, so.

22 Q Well, in terms of any complex case, a qualified doctor
23 takes second opinions into account when forming a diagnosis or
24 treatment plan under the standard of care. Correct?

25 A Yes.

1 Q A qualified doctor takes second opinions into account
2 when forming a diagnosis. Correct?

3 A If necessary, yes.

4 Q Well, even if not absolutely necessary, would a doctor
5 routinely ignore or disregard all second opinions in a complex
6 case?

7 A I don't think there's a fixed answer on that, but in
8 general you would say yes. If it's, if it's complex and it's
9 uncertain, you would certainly want to do that.

10 Q You'd certainly want to look; at least consider second
11 opinions.

12 A Sure.

13 Q Correct?

14 A Sure.

15 Q Doctor, in terms of the B-reader program here, it's an
16 established fact in this case that CARD doesn't look at any of
17 the B-readers' interpretations for any diagnostic purpose.
18 Correct?

19 A Correct.

20 Q In terms of the B-readers, the panel of thoracic
21 radiologists in this case, CARD routinely diagnoses patients
22 before ever looking at B-reader interpretations. Correct?

23 A Yes.

24 Q In fact, CARD diagnoses before even the local
25 radiologists' interpretation return to CARD. Correct?

1 A Yes.

2 Q So it's fair to say that in terms of CARD's practice,
3 when it comes to second opinions on issues like the CT
4 interpretation from radiologists about whether or not patients
5 have an asbestos-related disease, CARD routinely disregards
6 all second opinions. Correct?

7 A No.

8 Q How is not even looking at the local radiologists', the
9 B-reading thoracic radiologists', the peer-review thoracic
10 radiologists' opinions about CT scans and chest X-rays, how is
11 disregarding all of those interpretations and just diagnosing
12 a patient before you ever have any of those interpretations
13 considering all reasonable outside sources of information?

14 A I think we certainly depend on an over-read for any other
15 conditions that might be of concern to our patients.

16 Q Sir, you don't even look at any of the over-reads from
17 CARD's own panel of experts until months after you've
18 diagnosed those CARD patients. Right?

19 A Right. Yeah.

20 Q And in terms of those B-reads, the only reason that you
21 look at any of those over-reads, apparently, is in the set of
22 patients who you've already determined do not have an
23 asbestos-related disease, to somehow claim that a chest X-ray
24 from a B-reader warrants lifetime Medicare benefits. Correct?

25 A Can you do -- please repeat it. I'm just --

1 Q Sure.

2 A I'm having trouble with your speed of everything. I
3 hope -- I'm sorry. It's just the way it is. I can't help it,
4 so.

5 Q That's okay.

6 Doctor, if we've got a patient who goes in to CARD on a
7 Monday and CARD visits with that patient, that patient is
8 sometimes sent out to Cabinet Peaks for a radiology read from
9 Dr. Stephen Becker that afternoon. Correct?

10 A Yes.

11 Q The next day, that patient may return to CARD for their
12 diagnostic visit. Correct?

13 A Yes.

14 Q And you have testified that in multiple cases, CARD will
15 share the diagnosis of asbestos-related disease with that
16 patient before any interpretive reads have come in, even from
17 the local radiologist. Correct?

18 A Yes. I was referring to the fact that we, we depend on
19 our radiologists, the local radiologists, to make sure we
20 don't miss anything, and that's very important to us, so.

21 Q Do you? And the reason I ask this pointedly is because
22 CARD's own internal records show, as your testimony has
23 confirmed, that you diagnose patients before you get any
24 radiologist's interpretation back to CARD.

25 What happens here, and correct me if I'm wrong, but on a

1 Monday, you'll send the patient out for a scan, they'll return
2 on a Tuesday, and, before any of the radiologists' reads have
3 come back from anybody, CARD will diagnose that patient with
4 an asbestos-related disease. In thousands of cases. Correct?

5 A I don't know how many, but, yes, we do that.

6 Q Actually, you do. Sir, there's a Preliminary
7 Instruction 5 here that sets out the undisputed or stipulated
8 facts in this case. And I'll represent to the jury that
9 Preliminary Instruction 5 has several paragraphs in it that
10 say that CARD is aware of the results of every read that comes
11 through that facility, your facility. Correct?

12 A Yes. I think we record that, yes.

13 Q So, I mean, your response here that you're not quite sure
14 about whether or not CARD is aware of the results of every
15 read, that's just not true. Right?

16 A I don't know the results of every read, right.

17 Q As a routine practice, CARD will diagnose patients at the
18 facility before any interpretive reads come back. Correct?

19 A Yes.

20 Q And CARD's own internal records, the master dataset, show
21 that CARD diagnoses patients long before B-reads come back
22 from the outside panel of NIOSH-certified readers who are
23 based in Wisconsin, in Denver at National Jewish, and other
24 facilities. Correct?

25 A Yes.

1 Q So to say that CARD relies on the radiologists'
2 interpretations in forming a diagnosis, that's just not true.
3 Correct?

4 A Correct.

5 Q I'd like to focus on just the B-read-only patients in
6 that scenario.

7 So on a Monday, a patient comes to CARD. They're sent
8 for an X-ray or CT from the local radiologist. Those scans
9 come back to CARD in this B-read-only scenario. And CARD,
10 looking at the CT scans, says to the patient on Tuesday, "You
11 do not have an asbestos-related disease."

12 Are you with me?

13 A Yes.

14 Q For that B-read group of patients, the scans are then
15 sent out to Wisconsin or Denver or New York to the panel of
16 thoracic radiologist B-readers. Correct?

17 A Yes.

18 Q And those scans sometimes don't return to the CARD
19 facility for several months. Correct?

20 A Correct.

21 Q So even in these B-read-only patients where CARD has
22 said, "J.P., you've got a fractured rib. You don't have
23 asbestos-related disease. We're not diagnosing you with ARD,"
24 there are times when CARD will get the B-read back from
25 New York or Wisconsin or Denver, and they'll call the patient

1 back in after showing that patient the letter that we saw on
2 Exhibit 40, page 2.

3 Can we have that on the screen?

4 MS. HANENBURG: (Complied with request.)

5 BY MR. DUERK:

6 Q Are you with me in terms of that general process?

7 A Yes.

8 Q Okay. And the only reason I'm bringing up this letter
9 again is in the interim period of time, after CARD has said to
10 the patient, "You're not sick. You don't have a diagnosis,"
11 CARD gets the B-read back from out of state, and they tell
12 that patient -- you don't have a diagnosis. You don't even
13 have a read from an outside reader that shows any significant
14 health implications. CARD is telling that patient, again,
15 "You're not sick, but we've got this B-read that may show a
16 fractured rib." And what happens at that stage of the process
17 is the patient is called back in to CARD. Correct?

18 A Yes.

19 Q And you don't see them again. You don't rediagnose them
20 again. In fact, you and CARD tell that patient, "We don't
21 think you have a diagnosis. We don't think you're sick." At
22 that point, somebody at CARD rubber-stamps an EHH form and
23 submits it to the Social Security Administration. Correct?

24 A We don't rubber-stamp it.

25 Q We've heard testimony from multiple witnesses that there

1 was a rubber stamp at CARD for years. Correct?

2 A There was. Early on, when I was by myself and we had a
3 huge volume of patients, we had to facilitate the process, and
4 we did for a while use a rubber, a rubber -- a stamp
5 signature.

6 Q So I apologize.

7 A We don't do that anymore.

8 Q You don't do that anymore, but you did for years.
9 Correct?

10 A Out of necessity, we did, yes.

11 Q You did that for years. Right?

12 A I don't know how long.

13 Q You did it for multiple years. If we look at the EHH
14 forms, as these jurors do, will do, and will see that these
15 EHH forms were signed and stamped in 2011, 2012, 2013 with the
16 exact same signature, in the exact same configuration, in the
17 exact same way. Do you have any reason to disagree with any
18 of what I just said?

19 A That's what I said. I said that. We did that for a
20 while when I was overloaded, and once -- I -- we've been
21 doing --

22 Q Sir?

23 A We've been signing them ever -- you know.

24 Q Sir, I'm gonna stop you.

25 A I can't tell you when we started, so.

1 Q My only question was whether you did that for years.

2 A Yes.

3 Q CARD did that for years. Correct?

4 A Several years, yes.

5 Q All right. So during that era, whenever it ended, the
6 patients would be informed that they had benefits under
7 Medicare. They'd come back in, and they'd get an EHH form
8 with a rubber-stamped signature on it from CARD. Correct?

9 A Yes.

10 Q You wouldn't see the patient face to face during that
11 time. You didn't rediagnose the patient. You still had the
12 opinion, as expressed in this letter that we've seen, that the
13 patient didn't have a diagnosis. Correct?

14 A Correct.

15 Q All right. And at no time did you tell the Social
16 Security Administration, at any point while you were using a
17 rubber stamp on dozens of these EHH forms, that that's what
18 you were doing. Correct?

19 A Correct.

20 Q So do you still agree with the statement that a qualified
21 doctor shares true, accurate, and complete information about
22 medical research -- I'm sorry; a qualified doctor shares true,
23 accurate, and complete information with their patient and the
24 government under the standard of care?

25 A Yes.

1 Q Would you agree that a qualified doctor shares true,
2 accurate, and complete information about medical research with
3 scientific study participants and administrators under the
4 standard of care?

5 A Yes.

6 Q Full disclosure, peer review, and open dialogue are key
7 components of medical research. Agree?

8 A Yes.

9 Q Qualified doctors use the scientific method. Agree?

10 A Depends on what you're using it for. That's a broad
11 question.

12 MR. DUERK: May I approach?

13 THE COURT: You may.

14 MR. DUERK: (Handing.) Let the record reflect that
15 I'm handing the witness what contains a deposition taken
16 November 8, 2019 at the Center for Asbestos Related Disease.

17 BY MR. DUERK:

18 Q Doctor, I'm looking at page 23, line 21.

19 My question was: "Qualified doctors use the scientific
20 method. Agree?"

21 A "Yes."

22 Q "The scientific method can be described as a procedure
23 consisting of systematic observation and the formulation,
24 testing, and modification of a -- of a hypothesis. Agree?"

25 A "Yes."

1 Q "Criticism is the backbone of the scientific method.
2 Agree?"

3 A "Yes."

4 Q So, Doctor, part of the scientific method in the medical
5 community is to encourage alternative viewpoints. Correct?

6 A Yes.

7 Q Part of the scientific method is to encourage second
8 opinions from other respected individuals. Correct?

9 A Yes.

10 Q The scientific method encourages listening to alternative
11 viewpoints, not shutting them out. Correct?

12 A Correct.

13 Q In terms of the standard of care, if you are disregarding
14 the standards of care, or not adhering to the American
15 Thoracic Society's guidelines, if you're disregarding commonly
16 known principles in the medical community, you can't be said
17 to be practicing as a qualified physician. Correct?

18 A Can you ask that again?

19 Q Doctor, if you're basically disregarding the second
20 opinions of other more qualified professionals, you can't be
21 said to be practicing as a qualified physician. Right?

22 A Right.

23 Q In terms of screening and treatment, there's a difference
24 at CARD between the two programs, screening versus treatment.
25 Is that fair?

1 A Yes.

2 Q The screening for asbestos-related disease is offered
3 free to qualifying Libby residents. Correct?

4 A Yes.

5 Q Screening is paid for by the federal grant itself.
6 Correct?

7 A Screening is, yes.

8 Q Once a patient is diagnosed with an asbestos-related
9 disease, however, and enrolled in Medicare, screening is no
10 longer free to that patient; that is to say, Medicare picks up
11 the bill for that afterwards. Right?

12 A Yes. And treatment, yeah.

13 Q And if the patient's Medicare is based on a CARD
14 diagnosis, Medicare picks up the bill not just for that
15 patient's treating appointments at CARD but for that patient's
16 medical appointments at all other facilities. Correct?

17 A Correct.

18 Q That's true for patients who receive a script for opioids
19 as well; paid for by Medicare. Correct?

20 A Some -- I'm sure some are, yes.

21 Q Right. So if the patient is diagnosed with an
22 asbestos-related disease and submitted for Medicare benefits
23 and CARD writes that patient a script for opioids, in the same
24 way that Medicare picks up the tab for any treatment that
25 patient receives at an outside provider's office, Medicare

1 would also pay for that patient's opioid prescriptions.

2 Correct?

3 A If medically necessary, yes.

4 Q Right. In terms of those opioid patients, not only does
5 Medicare pay for their OxyContin, for their fentanyl, for
6 their morphine sulfate, for tramadol, Medicare would also pay
7 for any medical appointments those patients attend related to
8 pain management. Correct?

9 A Yes.

10 Q So if you have a patient diagnosed with an
11 asbestos-related disease who receives Medicare under the EHH
12 program, and that patient goes to Kootenai Drug or Granite
13 Pharmacy with a script from CARD, and their fentanyl costs
14 them \$50 with a \$20 co-pay and the government picks up the
15 remainder of that tab, those Medicare payments, those federal
16 dollars, resulted from the CARD script. Correct?

17 A Yes.

18 Q And if that patient doesn't have an asbestos-related
19 disease or if that patient can show no medical necessity for
20 those opioids, Medicare shouldn't pay those bills on that
21 script. Correct?

22 A If there's not medical necessity, no.

23 Q All right. In the same way that some of those pain
24 management patients who have Medicare because of CARD's
25 diagnosis under the EHH program go to other care facilities

1 and Medicare pays those other facilities, if that pain
2 management patient, on Medicare due to an asbestos-related
3 disease, receives one-on-one pain management treatment at
4 CARD, CARD gets paid for that treatment visit as well.

5 Correct?

6 A Yes.

7 Q And it is a requirement under the standard of care for
8 any physician who is prescribing opioids to do an in-person
9 pain assessment for opioid patients on a regular basis.

10 Correct?

11 A In general, yes.

12 Q So when patients on opioids, based on your prescription,
13 come to CARD for pain management visits, Medicare pays CARD
14 for those patient visits. Correct?

15 A Yes.

16 Q Other provider visits for those opioid patients are paid
17 for as well. So, for example, if a CARD patient winds up in
18 the emergency room due to a drug overdose, Medicare is picking
19 up the tab for that as well. Correct?

20 A I'm sure.

21 Q In each of these examples -- in some of them, CARD may
22 not be getting paid money, federal money, directly for the
23 opioid scripts that CARD writes, for the visits of these
24 patients to other providers, but Medicare money is being paid
25 for these patients in other ways based on a CARD diagnosis of

1 asbestos-related disease or a CARD prescription for opioid
2 drugs when CARD is asserting that that opioid pain medication
3 is medically necessary. Correct?

4 A Can you give me the short version?

5 Q Sure.

6 I'm a patient that has a prescription from you. That
7 prescription is for fentanyl.

8 A Um-hmm.

9 Q Your allegation or your diagnosis of me is that that
10 opioid script is medically necessary for whatever reason. I
11 have Medicare from whatever source. And I go to a pharmacy,
12 and I submit my script, and Medicare picks up part of that
13 payment, and I pay the rest of the co-pay.

14 A Correct.

15 Q Are we on the same page?

16 A Yes.

17 Q Okay.

18 A Correct.

19 Q So federal funds have paid for my opioids. Right?

20 A Right.

21 Q If my opioids are not medically necessary and the federal
22 government is still picking up the tab, that's improper.
23 Correct?

24 A Well, it's not good for the patient or Medicare.

25 Q Right. It's not good for the patient. It's not good for

1 Medicare.

2 A Right.

3 Q And opioid scripts that aren't medically necessary, it's
4 improper. Correct?

5 A Yes.

6 Q In terms of CARD Patient Dan Q., we've heard testimony
7 that you prescribed 450 morphine milligram equivalents in one
8 day. You're aware of that. Correct?

9 A No.

10 Q When I deposed you, I asked you to calculate or to look
11 at the morphine milligram equivalents for Mr. Q. Do you
12 recall that?

13 A Yes, I do.

14 Q I also asked you about other care providers in the Libby
15 area who may have lost their medical licenses because of their
16 script-writing practices. Do you remember that?

17 A Yes.

18 Q You are familiar with a Dr. Knecht, K-n-e-c-h-t.
19 Correct?

20 A Yes.

21 Q In Dr. Knecht's case, you're aware that Dr. Knecht was
22 writing morphine milligram equivalent scripts in amounts
23 between 150 and 180 morphine milligram equivalents per day.
24 Correct?

25 A I don't know that.

1 MR. DUERK: If we could -- I would offer Exhibit 57
2 for demonstrative purposes alone.

3 THE COURT: Any objection, Mr. Bechtold?

4 MR. BECHTOLD: No objection, Your Honor.

5 THE COURT: Fifty-seven is admitted for
6 demonstrative purposes alone.

7 (Demonstrative Exhibit 57 was received in evidence.)

8 MR. DUERK: If we could publish page 2, please?

9 MS. HANENBURG: (Complied with request.)

10 BY MR. DUERK:

11 Q Doctor, do you see Exhibit 57-1 on the screen? I'll
12 represent to you that this is an article about the
13 overprescribing practices of Dr. Knecht.

14 A Yes.

15 MR. DUERK: If we could turn to page 3?

16 MS. HANENBURG: (Complied with request.)

17 BY MR. DUERK:

18 Q I know the print is very small. We'll try to increase
19 it.

20 Do you see -- the article is dated December 24, 2015.

21 A Yes.

22 Q Sir, does this refresh your recollection that Dr. Clyde
23 Knecht, a physician who practices in Libby, had a number of
24 practice violations, including excessive prescribing of
25 narcotics?

1 A Yes. I'm aware of that, so.

2 MR. DUERK: All right. If we could scroll down,
3 please? Please stop.

4 MS. HANENBURG: (Complied with request.)

5 BY MR. DUERK:

6 Q Do you see that this article references the reason for
7 the violations in Dr. Knecht's case?

8 A I just see dosage amounts.

9 Q Okay. And in terms of the dosage amounts in this case,
10 Dr. Knecht prescribed opioids in a range of 150 morphine
11 milligram equivalents per day up until 170 morphine milligram
12 equivalents per day.

13 A Correct.

14 Q And does that refresh your recollection about some of the
15 reasons that Dr. Knecht lost his license for overprescribing
16 in Libby?

17 A I don't think that was the reason, no.

18 Q You don't think that was the reason?

19 A No.

20 Q But you do see that Dr. Knecht was writing scripts for a
21 morphine milligram equivalent in a range of 150 to 170
22 morphine milligram equivalents per day. Correct?

23 A I see that, yes.

24 Q In terms of your deposition, we discussed your treatment
25 of Dan Q. Do you recall that?

1 A Yes.

2 Q And in terms of calculating the dose here, we discussed
3 the different dosages of morphine milligram equivalents for
4 oxycodone 15 as well as Mr. QXXXX's -- Mr. Q's other
5 prescriptions. Correct?

6 A Yes.

7 Q You heard the testimony that Dan Q. received a script
8 from you in the range of 450 morphine milligram equivalents
9 per day as calculated by Dr. Heppe. Correct?

10 A Yeah.

11 Q So you prescribed almost three times the daily morphine
12 milligram equivalents to Dan Q. over what the patient in
13 Dr. Knecht's case had. Correct?

14 A Correct, but I -- he was already on --

15 Q Doctor, I only asked --

16 A Okay. Right.

17 Q -- if you were aware of it.

18 A All right.

19 Q You were here for Eric Hines' testimony yesterday?

20 A (No response.)

21 Q Eric Hines was the forensic economist --

22 A Yes.

23 Q -- from Boston?

24 A Yes.

25 Q Mr. Hines testified that over 1,000 patients had signed

1 EHH forms from the Center for Asbestos Related Disease without
2 any corroborating radiologist's scan finding any signs of
3 asbestos-related disease in those patients. Correct?

4 A I think he said something around that amount. I didn't
5 see exactly the number, so.

6 Q Well, it wasn't "something around that amount."

7 If we could pull up Exhibit 269, page 1? I'm sorry; if
8 we could pull up 269, page 8?

9 MS. HANENBURG: (Complied with request.)

10 BY MR. DUERK:

11 Q Mr. Hines testified yesterday that there were 1,099
12 individual patients "for which CARD completed, signed and
13 dated an EHH form, but there are no outside reads supporting
14 the diagnosis. These include patients only supported by a
15 CARD [chest X-ray] and/or CT [scan], and those with no
16 supporting tests."

17 Did I read that correctly?

18 A Yes.

19 Q In terms of any figures that would refute Mr. Hines'
20 number, you're aware of nothing in CARD's records that would
21 say anything different than Mr. Hines' assessment based on
22 CARD's own internal records. And by the "internal records,"
23 here I'm talking about the master dataset or the Libby
24 screening dataset. Correct?

25 A No, I don't. Correct.

1 Q Okay.

2 Doctor, in terms of you, yourself, you diagnosed yourself
3 with asbestos-related disease on September 7, 2012. Correct?

4 A Yes.

5 Q In terms of your own EHH form, however, you didn't sign
6 it. You had Nurse Boltz sign it. Correct?

7 A Yeah. I --

8 Q Let's go ahead and put Exhibit --

9 A I approved of it, and she signed it, so.

10 MR. DUERK: Let's go ahead and put Exhibit 202 on
11 the screen.

12 MS. HANENBURG: (Complied with request.)

13 BY MR. DUERK:

14 Q Doctor, based on the master dataset, after Michelle Boltz
15 signed this form, it appears you stopped getting any annual
16 chest X-rays or CT scans. Is that right?

17 A Yeah. I don't think I -- I haven't done any of those
18 since then, so.

19 Q Since 2012, you didn't have any other chest X-rays or
20 CT scans taken.

21 A No.

22 Q Right?

23 A No.

24 Q Doctor, anytime somebody's submitted to a chest X-ray or
25 a CT, there's possible harm that could be caused to that

1 patient due to radiation exposure. Correct?

2 A I think a single one is not creating a problem. It's
3 just how many in this period of time. It increases risk from
4 radiation.

5 Q Sure. In Judy P.'s case, for example, the master dataset
6 will show that she was scanned year after year after year,
7 even though the clinic knew she didn't have a diagnosis of
8 asbestos-related disease. Correct?

9 A I don't know that.

10 Q In terms of Judy P.'s master dataset excerpt -- what is
11 the number?

12 (Discussion off the record at counsel table.)

13 MR. DUERK: 207. I believe this has already been
14 admitted into evidence.

15 THE COURT: It has.

16 BY MR. DUERK:

17 Q Do we see that Judy P. apparently had scans in 2013,
18 2014? It looks like another one in 2015. Regardless of the
19 number or the precise years, it looks like Judy P. was
20 submitted to radiation at least six times during the screening
21 program. Correct?

22 A Yeah. It looks like, looks like six, yeah.

23 Q Okay.

24 A Over that period, time frame, um-hmm.

25 MR. DUERK: If we could go to page 2?

1 MS. HANENBURG: (Complied with request.)

2 BY MR. DUERK:

3 Q And in terms of those six times, looking at the ARD
4 column, CARD's internal records show that never, not one time,
5 did CARD ever consider J.P. to have a diagnosis of
6 asbestos-related disease based on CARD's own internal records.

7 A Correct. Yeah.

8 MR. DUERK: If we could look at -- I believe
9 Exhibit 202 has already been -- I'm sorry. Exhibit 56 has
10 already been admitted into evidence?

11 (Discussion off the record at counsel table.)

12 THE COURT: Yes.

13 BY MR. DUERK:

14 Q Dr. Black, your master dataset excerpt indicates that
15 you're absolutely right. After 2012, it appears that you
16 didn't have any more exposure to radiation in your case after
17 you were diagnosed. Correct?

18 A Right.

19 Q And in your case, aside from your own read of the
20 CT scan, there were no other radiologists -- pardon me. You
21 were not a radiologist.

22 There were no radiologists who agreed with your
23 interpretation that you had positive signs of an abnormality
24 on your CT. Correct?

25 A I don't know that.

1 MR. DUERK: If we could go to (indicating) this
2 section?

3 MS. HANENBURG: (Complied with request.)

4 BY MR. DUERK:

5 Q Sir, in 2010 in terms of your chest X-rays, and in 2012
6 in terms of your chest X-rays, all of those reads were read by
7 the radiologists in the B-reader panel as negative. Correct?

8 A Yes.

9 MR. DUERK: If we could go to the next set of data
10 below?

11 MS. HANENBURG: (Complied with request.)

12 BY MR. DUERK:

13 Q The peer-review radiologists -- this is a level of
14 NIOSH-certified, X-ray-reading radiologists above the
15 B-readers -- they came back and discussed your B-reads in
16 2010, and all of them found that you were negative for
17 asbestos-related disease as well. Correct?

18 A Correct.

19 MR. DUERK: If we could go to the next dataset?

20 MS. HANENBURG: (Complied with request.)

21 BY MR. DUERK:

22 Q And in terms of your CT scans from the local radiologists
23 here designated as the outside radiologists, your CT scans
24 were read by radiologists as negative for asbestos-related
25 disease.

1 You were the only one who found any positive findings in
2 your case. Correct?

3 A Yes. That's according to this, yes.

4 Q So every single radiologist from the local radiologist
5 through the B-readers to the peer-review readers, every single
6 scan in your case was read as negative by everyone. The only
7 positive read that suggested any kind of abnormality on a CT
8 was read by you. Correct?

9 A Yes.

10 Q And after you found a positive sign of an abnormality,
11 you stopped screening. Correct?

12 A No. My pain stopped finally.

13 Q Right. And you haven't had it since. Correct?

14 A I had it for about a year. I had pain in my chest. It's
15 uncomfortable. Kept me awake at night, and I finally got
16 screened. That's why I went and got screened.

17 Q Yeah.

18 A And so I had -- my nurse practitioner, Michelle Boltz,
19 had read a lot of films with me. She had a very -- had a
20 sharp eye for looking for pleural disease. And I had her read
21 it first because I said, "Why don't you do it, because it's
22 mine, and I want you to look at it." And she identified it
23 right away. And then I looked at it, and I said, "Yeah" --

24 Q So, so --

25 A -- "there's a mild, mild pleural thickening with it."

1 So, yeah.

2 Q Yeah. So your pain went away that year. Correct?

3 A It took -- it was over a year.

4 Q Okay. But your pain went away?

5 A Yeah. And then I didn't -- yeah, so I didn't feel the
6 need to keep -- you know, to go ahead and do more, any more
7 study with it, so.

8 Q So my questions are these: Your pain went away.
9 Correct?

10 A Yes.

11 Q But your Medicare benefits didn't. Correct?

12 A Right. I think I was 63, maybe, so I might have had it
13 for a couple years, so.

14 Q I understand.

15 A Yeah.

16 Q It was improper for Nurse Boltz to sign the EHH form for
17 her mother. Correct?

18 A Yeah. I -- we -- they shouldn't have let that happen,
19 but it happened, so. But I did read, I read her --

20 Q Sir --

21 A Okay.

22 Q -- it's a yes or no question.

23 A Yes. Okay.

24 Q It was improper for Nurse Boltz to sign the EHH for her
25 mother. It was improper for Nurse Boltz to sign the EHH form

1 for you. Correct?

2 A Yes.

3 Q It would be improper for a nurse practitioner or a
4 physician's assistant to sign an EHH form. Correct?

5 A Yes. It says a physician, and that was my mistake, so.

6 Q Right. So it was improper for, it's improper for a nurse
7 practitioner or a P.A. to sign an EHH form. It needs to be a
8 physician. Correct?

9 A Correct.

10 Q We heard testimony this morning from -- I forget if it
11 was Tami Reatz or Liz Voorhies, but Miles Miller is a
12 physician's assistant at the asbestos -- the clinic for
13 asbestos-related disease at CARD. Correct?

14 A Yes.

15 Q You heard that testimony from Nurse Reatz today. Right?

16 A Yes.

17 Q You heard Nurse Reatz testify that EHH forms were signed
18 at CARD with a rubber stamp by Miles Miller and submitted to
19 the federal government. Correct?

20 A I would have made -- I was directly involved --

21 Q Not my question.

22 A Oh, okay.

23 Q You heard that testimony.

24 A Yeah, I heard it. I heard it, yes.

25 Q You heard the testimony --

1 A Right.

2 Q -- that Miles Miller, a physician assistant,
3 rubber-stamped your signature on an EHH form and submitted it
4 to the Social Security Administration office in Kalispell.
5 Correct?

6 A That's correct.

7 Q And that is not proper, either. Correct?

8 A The rubber stamp, right, right.

9 Q Sir, you're still working today at the Center for
10 Asbestos Related Disease?

11 A Not in clinic. I work on research projects.

12 Q Okay. And you're still active in your research projects?

13 A Yes.

14 Q You're still active in the outdoors. Correct?

15 A Well, I try to.

16 Q Yeah. Your staff have all described you as busy and
17 energetic. Is that accurate?

18 A Well, as much as you can be at my age, but, yeah. I try
19 to stay that way, so.

20 Q Okay. Michelle Boltz came in here and admitted that she
21 signed your EHH form, but she testified that she didn't
22 remember that she had done so, nor was she aware of any
23 providers at the clinic who had asbestos-related disease. Do
24 you recall her testimony?

25 A I don't know. Yeah, I, I'm trying to remember that. I

1 don't.

2 Q That's okay.

3 Before being confronted with her signature on your EHH
4 form, she said she didn't know of any providers at CARD who
5 had an asbestos-related disease. Fair?

6 A I -- yeah.

7 Q Okay. In terms of the research responsibilities that you
8 have, do you still maintain a busy travel schedule with some
9 of those activities?

10 A No. Just mostly through Zoom and transfer of images and
11 stuff back and forth to our thoracic radiologists and our
12 computer engineer that we work with on the imaging research,
13 on automated imaging we're working on with Cornell, so.

14 Q And "Cornell" is Cornell University --

15 A Yes.

16 Q -- in Upstate New York?

17 A Right. We're doing that to try to work on the issues
18 that we're arguing about today, in recognizing pleural
19 disease, so.

20 Q In terms of other travel, do you still go to the Asbestos
21 Disease Awareness Organization conferences in Washington, D.C.
22 or anywhere else on the Eastern Seaboard?

23 A I haven't. I still serve as a scientific advisor for the
24 organization, but we have not met since COVID, really. We
25 have just not met, so.

1 Q The American -- or, I'm sorry, the Asbestos Disease
2 Awareness Organization, that's in part an advocacy group.
3 Correct?

4 A Yeah, for the banning of asbestos.

5 Q Right.

6 A That's the whole --

7 Q And in terms of traveling to the American -- or, I'm
8 sorry, the Asbestos Disease Awareness Organization's
9 conferences in New York, Chicago, other cities in the United
10 States for a time, that's something that you and other CARD
11 employees did year after year. Correct?

12 A Yes.

13 Q You would travel to Washington, D.C., for example, and
14 stay in a hotel with other CARD employees, attend the
15 conferences for multiple days, stay in hotels, go out for
16 meals, and all of that was paid for with CARD grant funds.
17 Correct?

18 A I'm not sure on all of that. I think some, somewhat. We
19 used some CARD funds. It was an out-, it was an outreach for
20 our organization --

21 Q Okay.

22 A -- and so that would be included in our grant, yes.

23 Q And so some grant funds --

24 A (Nodded head affirmatively.)

25 Q -- were used to pay for your and other CARD employees'

1 attendance at an advocacy group meeting in Washington, D.C.

2 Correct?

3 A Yeah. I -- like I said, yeah. I think -- and I don't
4 know how much.

5 Q That's okay.

6 A But, anyway, yes, some, some monies were.

7 Q In terms of other travel that you've done in the past on
8 behalf of CARD, at one point you traveled to Perth, Australia.
9 Correct?

10 A Yes.

11 Q And you traveled to Perth, Australia using, in part,
12 federal funds under the grant. Correct?

13 A No. The Center for Asbestos Related Disease in Perth had
14 invited me to speak at their annual mesothelioma conference.
15 They wanted me to talk on Libby amphibole, and so it was paid
16 by them. We went there, so.

17 Q But in terms of that travel to Perth, Australia, it takes
18 about a day and a half to get there. Correct?

19 A It takes a week to get over it, too, so.

20 Q Yeah. But in terms of your travel schedule, during the
21 time that you were clinical director at the Center for
22 Asbestos Related Disease, fair to say that you had a busy
23 travel schedule. Correct?

24 A I did at one time, yeah.

25 Q Okay. In terms of your asbestos-related disease

1 diagnosis, it hasn't caused any restrictions in your
2 activities in any way. Correct?

3 A No. I did pretty well, yeah.

4 Q Yep.

5 A Lucky.

6 Q Last summer, you had an intern at the Center for Asbestos
7 Related Disease. Was that in 2022?

8 A (No response.)

9 Q Is this -- did you have -- have you had interns at the
10 Center for Asbestos Related Disease at any point?

11 A You'd have to say a name, I think.

12 Q Sure. A young woman named Destiny?

13 A Oh. Yeah.

14 Q She was from Georgia. Correct?

15 A Right, right, right.

16 Q Destiny wrote about her internship in an article titled
17 "Surreal, Intimidating & Affirming." Did you ever read that
18 article?

19 A I didn't get to see that one.

20 Q You remember Destiny, though.

21 A Yes.

22 Q Correct?

23 A Yeah, in public health, so, yeah.

24 MR. DUERK: Can I approach?

25 THE COURT: You may.

1 BY MR. DUERK:

2 Q (Hanging.)

3 A Oh.

4 Q Dr. Black, is this a photograph of you and Destiny?

5 A It sure is, yeah.

6 Q Does it appear to be true and accurate?

7 A Oh, yeah. You bet, so.

8 Q You took a hike with Destiny. Correct?

9 A Yeah, Destiny and Chris, who will be here, I think, too,
10 so.

11 Q Chris Ekstedt. Correct?

12 A Yeah. She, she went that day, too. We all went up to
13 the top there, so.

14 Q You went to the top of what mountain?

15 A Flat Iron.

16 Q And you were above tree line for quite a while during
17 that hike. Correct?

18 A Yeah. They -- yeah, I managed to get up there, yeah.

19 Q And in terms of that hike, that hike was thousands of
20 feet in elevation above the valley floor. Correct?

21 A Yes.

22 Q You wore a backpack. Right?

23 A No. I just had a light pack on there, so.

24 Q So you had a light pack on.

25 A Yeah.

1 Q But it was on your back. Correct?

2 A Yes, um-hmm.

3 Q You wore hiking boots. Correct?

4 A Must be.

5 Q Destiny had hiking poles. Correct?

6 A Yes.

7 MR. DUERK: If we could publish? I would move to
8 publish Exhibit 273.

9 THE COURT: Any objection?

10 MR. BECHTOLD: No objection, Your Honor.

11 THE COURT: 273 is admitted and may be published.

12 (Exhibit 273 was received in evidence.)

13 BY MR. DUERK:

14 Q Sir, so we see a backpack. We see some hiking boots.
15 We see some hiking poles in this photo. Correct?

16 A Yes.

17 Q The one piece of equipment that we do not see in this
18 photo is an oxygen tank. Fair?

19 A I didn't need it.

20 (Discussion off the record at counsel table.)

21 MR. DUERK: I have no further questions at this
22 time.

23 THE COURT: Mr. Bechtold, do you wish to examine
24 Dr. Black at this time or reserve?

25 MR. BECHTOLD: May I have a moment, Your Honor?

1 THE COURT: You may.

2 MR. BECHTOLD: Thank you.

3 (Discussion off the record at counsel table.)

4 MR. BECHTOLD: Your Honor, we'll reserve questions
5 for our case in chief.

6 THE COURT: All right. Thank you, Mr. Bechtold.

7 Dr. Black, you may -- you're excused at this time.

8 THE WITNESS: Thank you.

9 (End of requested excerpt, 14:23:40.)

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REPORTER'S CERTIFICATE

I, JoAnn Jett Corson, a Registered Diplomat Reporter and Certified Realtime Reporter, certify that the foregoing transcript is a true and correct record of the proceedings given at the time and place hereinbefore mentioned; that the proceedings were reported by me in machine shorthand and thereafter reduced to typewriting using computer-assisted transcription; that after being reduced to typewriting, a certified copy of this transcript will be filed electronically with the Court.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys to this action, nor financially interested in this action.

IN WITNESS WHEREOF, I have set my hand at Missoula, Montana this 5th day of July, 2023.

/s/ JoAnn Jett Corson

JoAnn Jett Corson
United States Court Reporter

I certify that the foregoing is a true and correct copy of the transcript originally filed with the clerk of court which incorporates redactions of personal identifiers requested by counsel of record in accordance with Judicial Conference policy. Redacted characters appear as an X in the transcript.

Dated this 27th day of July, 2023.

/s/ JoAnn Corson Bacheller

JoAnn Corson Bacheller
United States Court Reporter